SOUTH CAROLINA STATE REGISTER DISCLAIMER

SOUTH CAROLINA STATE REGISTER

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GENERAL ASSEMBLY

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

SOUTH CAROLINA STATE REGISTER

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

STYLE AND FORMAT

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

Notices are documents considered by the agency to have general public interest.
Notices of Drafting Regulations give interested persons the opportunity to comment during the initial drafting period before regulations are submitted as proposed.
Proposed Regulations are those regulations pending permanent adoption by an agency.
Pending Regulations Submitted to the General Assembly are regulations adopted by the agency pending approval by the General Assembly.
Final Regulations have been permanently adopted by the agency and approved by the General Assembly.
Emergency Regulations have been adopted on an emergency basis by the agency.
Executive Orders are actions issued and taken by the Governor.

2020 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	1/10	2/14	3/13	4/10	5/8	6/12	7/10	8/14	9/11	10/9	11/13	12/11
Publishing Date	1/24	2/28	3/27	4/24	5/22	6/26	7/24	8/28	9/25	10/23	11/27	12/25

REPRODUCING OFFICIAL DOCUMENTS

Documents appearing in the *State Register* are prepared and printed at public expense. Media services are encouraged to give wide publicity to documents printed in the *State Register*.

PUBLIC INSPECTION OF DOCUMENTS

Documents filed with the Office of the State Register are available for public inspection during normal office hours, 8:30 A.M. to 5:00 P.M., Monday through Friday. The Office of the State Register is in the Legislative Council, Fourth Floor, Rembert C. Dennis Building, 1000 Assembly Street, in Columbia. Telephone inquiries concerning material in the *State Register* or the *South Carolina Code of Regulations* may be made by calling (803) 212-4500.

ADOPTION, AMENDMENT AND REPEAL OF REGULATIONS

To adopt, amend or repeal a regulation, an agency must publish in the *State Register* a Notice of Drafting; a Notice of the Proposed Regulation that contains an estimate of the proposed action's economic impact; and, a notice that gives the public an opportunity to comment on the proposal. If requested by twenty-five persons, a public hearing must be held at least thirty days after the date of publication of the notice in the *State Register*.

After the date of hearing, the regulation must be submitted to the General Assembly for approval. The General Assembly has one hundred twenty days to consider the regulation. If no legislation is introduced to disapprove or enacted to approve before the expiration of the one-hundred-twenty-day review period, the regulation is approved on the one hundred twentieth day and is effective upon publication in the *State Register*.

EMERGENCY REGULATIONS

An emergency regulation may be promulgated by an agency if the agency finds imminent peril to public health, safety or welfare. Emergency regulations are effective upon filing for a ninety-day period. If the original filing began and expired during the legislative interim, the regulation can be renewed once.

REGULATIONS PROMULGATED TO COMPLY WITH FEDERAL LAW

Regulations promulgated to comply with federal law are exempt from General Assembly review. Following the notice of proposed regulation and hearing, regulations are submitted to the *State Register* and are effective upon publication.

EFFECTIVE DATE OF REGULATIONS

Final Regulations take effect on the date of publication in the *State Register* unless otherwise noted within the text of the regulation.
Emergency Regulations take effect upon filing with the Legislative Council and remain effective for ninety days. If the original ninety-day period begins and expires during legislative interim, the regulation may be refiled for one additional ninety-day period.

SUBSCRIPTIONS

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4939	International Fuel Gas Code	Regulations and Admin. Procedures	Labor, Commerce and Industry
4940	International Mechanical Code	Regulations and Admin. Procedures	Labor, Commerce and Industry
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4957	South Carolina Teachers Loan Program	Regulations and Admin. Procedures	Education

Committee Request Withdrawal

4843	Board of Physical Therapy Examiners	Regulations and Admin. Procedures	Medical Affairs

Permanently Withdrawn

4922	Fee Schedules	Regulations and Admin. Procedures	Labor, Commerce and Industry
4919	Credential Classification	Regulations and Admin. Procedures	Education
4884	Indigent Screening Process	Regulations and Admin. Procedures	Judiciary
4900	Licensure for Foster Care	Regulations and Admin. Procedures	Family and Veterans' Services

Executive Order No. 2020-09

WHEREAS, on March 13, 2020, the undersigned issued Executive Order No. 2020-08, declaring a State of Emergency based on a determination that the 2019 Novel Coronavirus ("COVID-19") poses an actual or imminent public health emergency for the State of South Carolina; and

WHEREAS, in addition to declaring a State of Emergency, Executive Order No. 2020-08 directed, *inter alia*, the closure of public schools in the two counties where the South Carolina Department of Health and Environmental Control ("DHEC"), in consultation with the Centers for Disease Control and Prevention ("CDC"), identified instances of COVID-19 transmission via "community spread"; and

WHEREAS, on March 13, 2020, the President of the United States declared that the COVID-19 outbreak in the United States constitutes a national emergency, which began on March 1, 2020; and

WHEREAS, COVID-19 represents an evolving public health threat, which requires that the State of South Carolina continue to take all necessary and appropriate actions in proactively preparing for and promptly responding to the threat posed by the COVID-19; and

WHEREAS, section 1-3-430 of the South Carolina Code of Laws, as amended, provides that when a state of emergency has been declared, the undersigned "may further, cope with such threats and danger, order and direct any person or group of persons to do any act which would in his opinion prevent or minimize danger to life, limb or property, or prevent a breach of the peace; and he may order any person or group of persons to refrain from doing any act or thing which would, in his opinion, endanger life, limb or property, or cause, or tend to cause, a breach of the peace, or endanger the peace and good order of the State or any section or community thereof, and he shall have full power by use of all appropriate available means to enforce such order or proclamation"; and

WHEREAS, in accordance with section 25-1-440 of the South Carolina Code of Laws, as amended, when an emergency has been declared, the undersigned is further empowered with certain additional authority, to include "suspend[ing] provisions of existing regulations prescribing procedures for conduct of state business if strict compliance with the provisions thereof would in any way prevent, hinder, or delay necessary action in coping with the emergency"; and

WHEREAS, for the aforementioned and other reasons, the undersigned has determined that the evolving public health threat posed by COVID-19 requires additional proactive action by the State of South Carolina.

NOW, THEREFORE, by virtue of the authority vested in me as Governor of the State of South Carolina and pursuant to the Constitution and Laws of this State and the powers conferred upon me therein, I hereby order and direct as follows:

Section 1. I hereby direct the continued execution of the South Carolina Emergency Operations Plan and the utilization of all available resources of state government as reasonably necessary to address the current State of Emergency.

Section 2. I hereby direct the closure of all public schools in the State of South Carolina for students and non-essential employees beginning Monday, March 16, 2020, and through Tuesday, March 31, 2020, unless such directive is otherwise modified, amended, extended, or rescinded. This Order applies to all students and employees of public schools, to include state-supported colleges, universities, and technical colleges, in the State of South Carolina, with the exception of those emergency or other critical personnel designated as essential, or whose presence is otherwise deemed necessary, by the appropriate school district, college, or university official. I further authorize the requisite school district, college, and university officials to

make any necessary and appropriate decisions or arrangements to account for local needs and other unique circumstances, to include establishing or maintaining means to deliver virtual instruction and remote learning, assisting with or facilitating the distribution of food and the delivery of nutritional services, and housing out-of-state or displaced students.

Section 3. I hereby direct that any election, to include special, county, and municipal elections, scheduled to be held in this State or conducted by any agency, department, or political subdivision thereof, on or before May 1, 2020, shall be postponed and rescheduled. The State Election Commission ("SEC") shall work with county boards of voter registration and elections to ensure that candidate filing period(s) continue as scheduled and that individuals may register to vote without interruption. The SEC shall issue any necessary and appropriate guidance regarding the implementation of this directive.

Section 4. To provide for and promote the health, safety, and welfare of residents and visitors, I urge that indoor and outdoor public gatherings be cancelled, postponed, or rescheduled, to the extent possible, or limited so as not to exceed one hundred (100) people. This Section does not apply to meetings of state or local government bodies or to private businesses and employers.

This Order is effective immediately. Further proclamations, orders, and directives deemed necessary to ensure the fullest possible protection of life and property during this State of Emergency shall be issued verbally by the undersigned and thereafter reduced to writing and published for dissemination within the succeeding 24-hour period.

GIVEN UNDER MY HAND AND THE GREAT SEAL OF THE STATE OF SOUTH CAROLINA, THIS 15th DAY OF MARCH, 2020.

HENRY MCMASTER
Governor

Executive Order No. 2020-10

WHEREAS, on March 13, 2020, the undersigned issued Executive Order No. 2020-08, declaring a State of Emergency based on a determination that the 2019 Novel Coronavirus ("COVID-19") poses an actual or imminent public health emergency for the State of South Carolina; and

WHEREAS, in addition to declaring a State of Emergency, Executive Order No. 2020-08 placed certain units or personnel of the South Carolina National Guard on State Active Duty, pursuant to section 25-1-1840 of the South Carolina Code of Laws, as amended, and directed, *inter alia*, the closure of public schools in those counties where the South Carolina Department of Health and Environmental Control ("DHEC"), in consultation with the Centers for Disease Control and Prevention ("CDC"), identified instances of COVID-19 transmission via "community spread"; and

WHEREAS, on March 13, 2020, the President of the United States declared that the COVID-19 outbreak in the United States constitutes a national emergency, which began on March 1, 2020; and

WHEREAS, on March 15, 2020, the undersigned issued Executive Order No. 2020-09, directing, *inter alia*, the closure of all public schools in the State of South Carolina for students and non-essential employees beginning Monday, March 16, 2020, and through Tuesday, March 31, 2020, and the postponement or rescheduling of any election scheduled to be held in this State on or before May 1, 2020, as well as urging that indoor and outdoor public gatherings be cancelled, postponed, or rescheduled, to the extent possible, or limited so as not to exceed one hundred (100) people; and

WHEREAS, on March 16, 2020, based on updated information and recommendations from the CDC, the President of the United States and the White House Coronavirus Task Force issued new guidance—titled, "The President's Coronavirus Guidelines for America: 15 Days to Slow the Spread of Coronavirus (COVID-19)"—to help protect Americans during the global COVID-19 outbreak; and

WHEREAS, the President's Coronavirus Guidelines for America recommend, *inter alia*, that the American people "avoid social gatherings in groups of more than 10 people" and "[a]void eating or drinking at bars, restaurants, and food courts—use drive-thru, pickup, or delivery options"; and

WHEREAS, COVID-19 represents an evolving public health threat, which requires that the State of South Carolina continue to take all necessary and appropriate actions in proactively preparing for and promptly responding to the threat posed by COVID-19; and

WHEREAS, section 1-3-430 of the South Carolina Code of Laws, as amended, provides that when a state of emergency has been declared, the undersigned "may further, cope with such threats and danger, order and direct any person or group of persons to do any act which would in his opinion prevent or minimize danger to life, limb or property, or prevent a breach of the peace; and he may order any person or group of persons to refrain from doing any act or thing which would, in his opinion, endanger life, limb or property, or cause, or tend to cause, a breach of the peace, or endanger the peace and good order of the State or any section or community thereof, and he shall have full power by use of all appropriate available means to enforce such order or proclamation"; and

WHEREAS, in accordance with section 25-1-440 of the South Carolina Code of Laws, as amended, when an emergency has been declared, the undersigned is "responsible for the safety, security, and welfare of the State and is empowered with [certain] additional authority to adequately discharge this responsibility," to include issuing, amending, and rescinding "emergency proclamations and regulations," which shall "have the force and effect of law as long as the emergency exists," and "suspend[ing] provisions of existing regulations prescribing procedures for conduct of state business if strict compliance with the provisions thereof would in any way prevent, hinder, or delay necessary action in coping with the emergency"; and

WHEREAS, in addition to the foregoing, pursuant to section 25-1-440 of the South Carolina Code of Laws, the undersigned is authorized during a declared emergency to "transfer the direction, personnel, or functions of state departments, agencies, and commissions, or units thereof, for purposes of facilitating or performing emergency services as necessary or desirable," and "compel performance by elected and appointed state, county, and municipal officials and employees of the emergency duties and functions assigned them in the State Emergency Plan or by Executive Order"; and

WHEREAS, as the elected Chief Executive of the State, the undersigned is further authorized, pursuant to section 25-1-440(7) of the South Carolina Code of Laws, to "direct and compel evacuation of all or part of the populace from any stricken or threatened area if this action is considered necessary for the preservation of life or other emergency mitigation, response, or recovery; to prescribe routes, modes of transportation, and destination in connection with evacuation; and to control ingress and egress at an emergency area, the movement of persons within the area, and the occupancy of premises therein"; and

WHEREAS, in accordance with section 16-7-10(A) of the South Carolina Code of Laws, as amended, "[i]n any area designated by the Governor in his proclamation that a state of emergency exists, and during the duration of the proclamation, it is unlawful for a person to: violate a provision in the proclamation including, but not limited to, any curfew set forth by the proclamation; congregate, unless authorized or in their homes, in groups of three or more and to refuse to disperse upon order of a law enforcement officer; or wilfully fail or refuse to comply with any lawful order or direction of any law enforcement officer"; and

WHEREAS, for the aforementioned and other reasons, the undersigned has determined that the evolving public health threat posed by COVID-19 requires additional proactive action by the State of South Carolina and other extraordinary measures deemed necessary to cope with the existing or anticipated situation.

NOW, THEREFORE, by virtue of the authority vested in me as Governor of the State of South Carolina and pursuant to the Constitution and Laws of this State and the powers conferred upon me therein, I hereby order and direct as follows:

Section 1. I hereby direct the continued execution of the South Carolina Emergency Operations Plan and the utilization of all available resources of state government as reasonably necessary to address the current State of Emergency.

Section 2. I hereby direct DHEC to utilize and exercise any and all emergency powers, as set forth in the Emergency Health Powers Act, codified as amended in Title 44, Chapter 4 of the South Carolina Code of Laws, deemed necessary to promptly and effectively address the current public health emergency. In accordance with section 44-4-500 of the South Carolina Code of Laws, as amended, DHEC shall continue to "use every available means to prevent the transmission of infectious disease and to ensure that all cases of infectious disease are subject to proper control and treatment."

Section 3. I hereby authorize and direct any agency within the undersigned's Cabinet or any other department within the Executive Branch, as defined by section 1-30-10 of the South Carolina Code of Laws, as amended, through its respective director or secretary, to waive or "suspend provisions of existing regulations prescribing procedures for conduct of state business if strict compliance with the provisions thereof would in any way prevent, hinder, or delay necessary action in coping with the emergency," in accordance with section 25-1-440 of the South Carolina Code of Laws and other applicable law.

Section 4. Pursuant to the aforementioned authorities and other applicable law, as well as the following specific provisions, I hereby order and direct that any and all restaurants or other food-service establishments (collectively, "Restaurants"), as set forth below, which prepare, produce, or otherwise offer or sell food or beverages of any kind for on-premises consumption in the State of South Carolina, shall suspend services for, and may not permit, on-premises or dine-in consumption, beginning Wednesday, March 18, 2020, and through Tuesday, March 31, 2020. Notwithstanding the foregoing directive and prohibition, I hereby authorize, permit, and encourage Restaurants to prepare, produce, or otherwise offer or sell food or beverages for off-premises consumption to the extent currently authorized, permitted, or otherwise allowed by law, whether via delivery, carry-out or drive-thru distribution, curbside pick-up, or other alternate means.

For purposes of this Section, Restaurants are defined as "retail food establishment[s]," pursuant to citation 1-201.10(B)(106) of Regulation 61-25 of the South Carolina Code of Regulations, licensed or permitted by DHEC in accordance with section 44-1-140 of the South Carolina Code of Laws, as amended, or other applicable law, with the exception of "independent living food service operations" or "licensed healthcare facilities," which are expressly excluded from the definition of Restaurants. This Section does not apply to grocery stores, pharmacies, convenience stores, gas stations, or charitable food distribution sites to the extent that such businesses, entities, or operations prepare, produce, or otherwise offer, sell, or distribute prepared food. However, on-premises, sit-down food or beverage service within these facilities is prohibited. This Section does not direct the closure of retail beverage venues that currently provide for the sale of alcoholic beverages for off-site consumption and does not require the closure of production operations or wholesale distribution at breweries, wineries, or distilleries. Notwithstanding the foregoing, to the extent that Restaurants are licensed or permitted by the South Carolina Department of Revenue ("DOR") for the on-premises sale of "alcoholic liquors" or "alcoholic beverages," as defined by section 61-6-20(1)(a) of the South Carolina Code of Laws, as amended, DOR and the South Carolina Law Enforcement Division are authorized to administer the provisions of this Order, and enforce compliance with the same, as necessary and appropriate. Pursuant to section 1-23-370(c) of the South Carolina Code of Laws, as amended, "[i]f the agency finds that public health, safety[,] or welfare

imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action."

Pursuant to sections 1-3-430 and 1-3-440 of the South Carolina Code of Laws, the undersigned is authorized to enforce the provisions of this Order, as well as Executive Order No. 2020-08, "by use of all appropriate available means," to include, *inter alia*, "[o]rder[ing] any and all law enforcement officers of the State or any of its subdivisions to do whatever may be deemed necessary to maintain peace and good order" and "order[ing] or direct[ing] any State, county[,] or city official to enforce the provisions of such proclamation in the courts of the State by injunction, mandamus, or other appropriate legal action." In addition to the foregoing authorities, noncompliance with this Section shall be further governed by the provisions of section 16-7-10(A) of the South Carolina Code of Laws.

Section 5. I hereby prohibit and direct the postponement, rescheduling, or cancellation, as applicable, of any organized event or public gathering scheduled to be hosted or held at any location or facility owned or operated by the State of South Carolina, or any political subdivision thereof, beginning Wednesday, March 18, 2020, and through Tuesday, March 31, 2020, if any such event or gathering could or would involve or require simultaneously convening fifty (50) or more persons in a single room, area, or other confined indoor or outdoor space. This Section does not apply to essential or emergency meetings of state or local government bodies or gatherings of government officials or employees or other personnel that may be required in connection with the performance of emergency or essential government functions. However, to the extent possible, state or local government bodies should utilize any available technology or other reasonable procedures to conduct such meetings and accommodate public participation via virtual or other remote or alternate means.

Section 6. I hereby direct the Adjutant General to initiate and oversee efforts to coordinate with, between, and among the South Carolina National Guard and hospitals or other healthcare providers, as necessary and applicable, regarding any actual or potential requirements for, or contingency plans related to, the mobilization, utilization, or acquisition of resources; the creation, modification, or construction of mobile or temporary facilities or other critical infrastructure; or other anticipated or unanticipated matters related to the State's preparation for, and response to, the evolving public health threat posed by COVID-19. In accordance with section 25-1-1840 of the South Carolina Code of Laws, Executive Order No. 2020-08, and other applicable law, I further authorize and direct the Adjutant General to activate and utilize any and all South Carolina National Guard personnel and equipment he deems necessary and appropriate and to issue the requisite supplemental orders.

Section 7. This Order is not intended to create, and does not create, any individual right, privilege, or benefit, whether substantive or procedural, enforceable at law or in equity by any party against the State of South Carolina, its agencies, departments, political subdivisions, or other entities, or any officers, employees, or agents thereof, or any other person.

This Order is effective immediately and, with the exception of Sections 4 and 5, shall remain in effect for a period of thirty (30) days unless otherwise modified, amended, or rescinded by subsequent Order. Further proclamations, orders, and directives deemed necessary to ensure the fullest possible protection of life and property during this State of Emergency shall be issued verbally by the undersigned and thereafter reduced to writing and published for dissemination within the succeeding 24-hour period.

GIVEN UNDER MY HAND AND THE GREAT SEAL OF THE STATE OF SOUTH CAROLINA, THIS 17th DAY OF MARCH, 2020.

HENRY MCMASTER
Governor

Executive Order No. 2020-11

WHEREAS, on March 13, 2020, the undersigned issued Executive Order No. 2020-08, declaring a State of Emergency based on a determination that the 2019 Novel Coronavirus ("COVID-19") poses an actual or imminent public health emergency for the State of South Carolina; and

WHEREAS, in addition to declaring a State of Emergency, Executive Order No. 2020-08 placed certain units or personnel of the South Carolina National Guard on State Active Duty, pursuant to section 25-1-1840 of the South Carolina Code of Laws, as amended, and directed, *inter alia*, the closure of public schools in those counties where the South Carolina Department of Health and Environmental Control ("DHEC"), in consultation with the Centers for Disease Control and Prevention ("CDC"), identified instances of COVID-19 transmission via "community spread"; and

WHEREAS, on March 13, 2020, the President of the United States declared that the COVID-19 outbreak in the United States constitutes a national emergency, which began on March 1, 2020; and

WHEREAS, on March 15, 2020, the undersigned issued Executive Order No. 2020-09, directing, *inter alia*, the closure of all public schools in the State of South Carolina for students and non-essential employees beginning Monday, March 16, 2020, and through Tuesday, March 31, 2020, and the postponement or rescheduling of any election scheduled to be held in this State on or before May 1, 2020, as well as urging that indoor and outdoor public gatherings be cancelled, postponed, or rescheduled, to the extent possible, or limited so as not to exceed one hundred (100) people; and

WHEREAS, on March 17, 2020, the undersigned issued Executive Order No. 2020-10, directing additional emergency measures in response to the threat posed by COVID-19, to include temporarily prohibiting restaurants from providing certain food services for on-premises consumption and prohibiting events at government facilities that would convene fifty (50) or more persons in a single room, area, or other confined indoor or outdoor space; and

WHEREAS, COVID-19 represents an evolving public health threat, which requires that the State of South Carolina continue to take all necessary and appropriate actions in proactively preparing for and promptly responding to the current public health emergency and the significant economic impacts associated with the same; and

WHEREAS, in recognition of the foregoing, the undersigned has determined that additional action is needed to ensure the proper function and continuity of state government operations and the uninterrupted performance and provision of emergency, essential, or otherwise mission-critical state government services, while simultaneously undertaking additional proactive measures to safeguard the health and safety of state employees; and

WHEREAS, due to the evolving nature and scope of the present emergency, the undersigned has also determined that the State of South Carolina must promptly initiate and implement further emergency measures to prepare for and respond to the significant, unanticipated economic and other impacts associated with COVID-19 and to mitigate the resulting burdens on individuals, businesses, and healthcare providers in the State of South Carolina; and

WHEREAS, section 1-3-430 of the South Carolina Code of Laws, as amended, provides that when a state of emergency has been declared, the undersigned "may further, cope with such threats and danger, order and direct any person or group of persons to do any act which would in his opinion prevent or minimize danger to life, limb or property, or prevent a breach of the peace; and he may order any person or group of persons to refrain from doing any act or thing which would, in his opinion, endanger life, limb or property, or cause, or tend to cause, a breach of the peace, or endanger the peace and good order of the State or any section or

community thereof, and he shall have full power by use of all appropriate available means to enforce such order or proclamation"; and

WHEREAS, pursuant to section 1-3-460 of the South Carolina Code of Laws, as amended, the foregoing and other emergency authority is "supplemental to and in aid of powers now vested in the Governor under the Constitution, statutory laws[,] and police powers of the State"; and

WHEREAS, in accordance with section 25-1-440 of the South Carolina Code of Laws, as amended, when an emergency has been declared, the undersigned is "responsible for the safety, security, and welfare of the State and is empowered with [certain] additional authority to adequately discharge this responsibility," to include issuing, amending, and rescinding "emergency proclamations and regulations," which shall "have the force and effect of law as long as the emergency exists," and "suspend[ing] provisions of existing regulations prescribing procedures for conduct of state business if strict compliance with the provisions thereof would in any way prevent, hinder, or delay necessary action in coping with the emergency"; and

WHEREAS, in addition to the foregoing, section 25-1-440 of the South Carolina Code of Laws, authorizes the undersigned, during a declared emergency, to "transfer the direction, personnel, or functions of state departments, agencies, and commissions, or units thereof, for purposes of facilitating or performing emergency services as necessary or desirable," and to "compel performance by elected and appointed state, county, and municipal officials and employees of the emergency duties and functions assigned them in the State Emergency Plan or by Executive Order"; and

WHEREAS, as the elected Chief Executive of the State, the undersigned is further authorized, pursuant to section 25-1-440 of the South Carolina Code of Laws, to "direct and compel evacuation of all or part of the populace from any stricken or threatened area if this action is considered necessary for the preservation of life or other emergency mitigation, response, or recovery; to prescribe routes, modes of transportation, and destination in connection with evacuation; and to control ingress and egress at an emergency area, the movement of persons within the area, and the occupancy of premises therein"; and

WHEREAS, in the context of a public health emergency, section 25-1-440(e) of the South Carolina Code of Laws, also "authorizes the deployment and use of any resources and personnel including, but not limited to, local officers and employees qualified as first responders, to which the plans apply and the use or distribution of any supplies, equipment, materials, and facilities assembled, stockpiled, or arranged to be made available pursuant to this act"; and

WHEREAS, in accordance with section 16-7-10(A) of the South Carolina Code of Laws, as amended, "[i]n any area designated by the Governor in his proclamation that a state of emergency exists, and during the duration of the proclamation, it is unlawful for a person to: violate a provision in the proclamation including, but not limited to, any curfew set forth by the proclamation; congregate, unless authorized or in their homes, in groups of three or more and to refuse to disperse upon order of a law enforcement officer; or wilfully fail or refuse to comply with any lawful order or direction of any law enforcement officer"; and

WHEREAS, for the aforementioned and other reasons, and pursuant to the cited authorities and other applicable law, the undersigned has determined that the evolving public health threat posed by COVID-19 requires additional proactive action by the State of South Carolina and the implementation of further extraordinary measures to cope with the existing or anticipated situation, to include providing for the continuity of state government operations, safeguarding the health and safety of state employees, mitigating significant economic impacts and burdens on affected individuals and employers, and providing regulatory relief to expedite emergency response initiatives and enhance the availability of critical healthcare services.

NOW, THEREFORE, by virtue of the authority vested in me as Governor of the State of South Carolina and pursuant to the Constitution and Laws of this State and the powers conferred upon me therein, I hereby order and direct as follows:

Section 1. Health and Safety of State Employees and Continuity of Essential Government Operations and Emergency Services

To ensure the proper function and continuity of state government operations and the uninterrupted performance and provision of emergency, essential, or otherwise mission-critical state government services, while simultaneously undertaking additional proactive measures to safeguard the health and safety of state employees, pursuant to the cited authorities and other applicable law, I hereby determine, order, and direct as follows:

A. I hereby direct that all non-essential employees and staff of the State of South Carolina, as described below, shall not report to work, physically or in-person, effective Friday, March 20, 2020, and until further notice. For purposes of this Section, essential employees and staff are those designated by, and in the sole discretion of, the corresponding Agency Head, or their designee, as essential or mission-critical to the State's ongoing preparation for and response to emergency conditions related to COVID-19 or otherwise necessary to serving the State of South Carolina by ensuring the continuity of critical operations of state government. Essential employees and staff may still be required to report to work as determined by, and in the sole discretion of, the corresponding Agency Head or their designee. Notwithstanding the foregoing or any previous event-specific employment classifications or designations, for purposes of this emergency, essential may be defined differently than it has been defined or applied in the context of hazardous weather events. In accordance with prior directives, as well as related guidance issued by the South Carolina Department of Administration ("Department"), state agencies and departments shall utilize, to the maximum extent possible, telecommuting or work-from-home options for non-essential employees and staff. This Section shall apply to state government agencies, departments, and offices under the authority of the undersigned. I further direct the Department to provide any necessary and appropriate supplemental guidance to such agencies, departments, and offices and to any additional agencies, departments, and offices so as to facilitate and expedite implementation of these initiatives.

B. I hereby prohibit any county, municipality, or other political subdivision of the State of South Carolina from closing any location or facility that is occupied or utilized, in whole or in part, by any agency, department, official, or employee of the State. Accordingly, pursuant to sections 1-3-410, 25-1-440, and 25-1-450 of the South Carolina Code of Laws, as well as other applicable law, I hereby direct that any such county, municipality, or other political subdivision of this State shall authorize, allow, and provide access to such locations or facilities by any state agency or department, and the officials and employees thereof, as deemed necessary and appropriate and in the manner prescribed by the state agency or department so as to ensure the uninterrupted performance and provision emergency, essential, or otherwise mission-critical government functions and services during the State of Emergency.

Section 2. Emergency Measures for Unemployment Claims and Benefits

To prepare for and respond to the significant economic impacts associated with COVID-19, pursuant to the cited authorities and other applicable law, I hereby determine, order, and direct as follows:

A. The State of South Carolina must promptly undertake and implement additional measures to prepare for and respond to the unanticipated economic impacts associated with COVID-19 and to mitigate the resulting burdens on individuals and businesses in the State of South Carolina. In recognition of the complexities posed by the current emergency circumstances, the United States Department of Labor ("DOL") issued Unemployment Insurance Program Letter No. 10-20, on March 12, 2020, providing guidance to state workforce agencies on various matters regarding unemployment benefits and "flexibilities related to COVID-19," and in doing so, recommended, *inter alia*, that "states should consider temporarily waiving" any specific requirements related to waiting periods for individuals who are otherwise eligible for unemployment benefits.

B. I hereby direct the South Carolina Department of Employment and Workforce ("DEW") to waive, on a temporary basis and consistent with the aforementioned DOL guidance, application of the one-week waiting

period for individuals who are otherwise eligible to receive unemployment benefits, pursuant to section 41-35-110(4) of the South Carolina Code of Laws, as amended, or alternatively, to determine that otherwise eligible individuals submitting claims in response to or associated with the unique circumstances and public health threat presented by COVID-19 "cannot pursue other employment for the usual one week's waiting period and that the terms of the statute cannot be met in such an unusual and limited circumstance." 1989 S.C. Op. Att'y Gen. 286 (Oct. 3, 1989). If and to the extent allowed by state and federal law, I further instruct DEW to implement, interpret, and apply the foregoing directives, as necessary and appropriate, in a manner that will facilitate and expedite the processing of claims submitted by eligible individuals who have suffered an unanticipated separation from employment, or reduction of hours, as a result of COVID-19. Subject to any further clarification or guidance by DEW, and to the maximum extent permitted by state and federal law, this Section shall apply to claims submitted between March 15, 2020, and April 18, 2020, by individuals who have suffered an unanticipated separation from employment, or reduction of hours, as a result of COVID-19.

C. I hereby authorize DEW, to the extent allowed by state and federal law, to exercise any statutory or regulatory authority to extend the deadline for employers to pay unemployment insurance taxes on first quarter (Q1) 2020 wages until June 1, 2020, without interest. Notwithstanding any such extension of the deadline to remit payment of unemployment insurances taxes, DEW shall still require employers to file any applicable wage reports by April 30, 2020, so as to ensure that the State has sufficient data to evaluate current workforce conditions and needs.

Section 3. Emergency Procurement Authorization

To expedite the State of South Carolina's continued preparation for and response to the ongoing emergency conditions related to COVID-19 and to facilitate the prompt procurement of any critical resources, supplies, and personnel identified and deemed necessary in connection with the same, pursuant to the cited authorities and other applicable law, I hereby determine, order, and direct as follows:

A. I hereby authorize and direct state agencies and departments to use the emergency procurement procedures set forth in section 11-35-1570 of the South Carolina Code of Laws, as amended, and any regulations issued pursuant thereto, as necessary and appropriate, to facilitate and expedite acquisition of any critical resources during the State of Emergency.

B. I hereby suspend, in accordance with section 25-1-440 of the South Carolina Code of Laws and other applicable law, any existing procurement-related regulations "if strict compliance with the provisions thereof would in any way prevent, hinder, or delay necessary action in coping with the emergency."

Section 4. Regulatory Flexibility for Emergency Healthcare Measures

To prepare for and respond to the ongoing and potential impacts associated with COVID-19 on the provision of critical healthcare services to the people of the State of South Carolina, pursuant to the cited authorities and other applicable law, I hereby determine, order, and direct as follows:

A. I hereby authorize and direct DHEC to suspend, for the duration of the present emergency, pursuant to Regulation 61-112 of the South Carolina Code of Regulations, any necessary and applicable provisions of Regulations 61-15 and 61-16, which restrict the use of unlicensed beds or space, the conversion of single and double occupancy patient rooms to account for higher patient capacity, or the establishment of wards, dormitories, or other spaces not designated as patient rooms.

B. I hereby suspend the monetary thresholds set forth in Section 102 of Regulation 61-15 of the South Carolina Code of Regulations for items requiring Certificate of Need Review, to the extent necessary and applicable, so as to permit healthcare facilities to make those capital expenditures and acquire medical equipment deemed necessary to prevent, diagnose, treat, or monitor the progression of COVID-19.

C. I further direct DHEC to suspend certain sections of the South Carolina Health Plan addressing health services requiring Certificate of Need Review, as DHEC deems necessary and appropriate, to allow a healthcare facility to provide temporary health services to adequately care for patients that may be affected by COVID-19. Healthcare facilities shall address any such requests pursuant to this Section to DHEC and coordinate with DHEC regarding the same.

Section 5. Public Safety and Enforcement

To maintain peace and good order during the State of Emergency, pursuant to the cited authorities and other applicable law, I hereby determine, order, and direct as follows:

A. I hereby direct any and all law enforcement officers of the State, or any political subdivision thereof, to do whatever may be deemed necessary to maintain peace and good order during the State of Emergency, to include vigorously enforcing the laws of this State pertaining to, *inter alia*, looting, robbery, theft, and acts of violence in accordance with sections 1-3-410, 1-3-430, and 1-3-440 of the South Carolina Code of Laws and other applicable law.

B. In accordance with section 1-3-440(4) of the South Carolina Code of Laws, I further authorize, order, and direct any State, county, or city official to enforce the provisions of this Order and any prior or future Orders issued in connection with the present State of Emergency, as necessary and appropriate, in the courts of the State by injunction, mandamus, or other appropriate legal action.

C. In addition to the foregoing authorities, noncompliance with this Order shall be further governed by the provisions of section 16-7-10(A) of the South Carolina Code of Laws.

Section 6. General Provisions

This Order is not intended to create, and does not create, any individual right, privilege, or benefit, whether substantive or procedural, enforceable at law or in equity by any party against the State of South Carolina, its agencies, departments, political subdivisions, or other entities, or any officers, employees, or agents thereof, or any other person. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this Order is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this Order, as the undersigned would have issued this Order, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

This Order is effective immediately and shall remain in effect for the duration of the State of Emergency unless otherwise modified, amended, or rescinded by subsequent Order. Further proclamations, orders, and directives deemed necessary to ensure the fullest possible protection of life and property during this State of Emergency shall be issued verbally by the undersigned and thereafter reduced to writing and published for dissemination within the succeeding 24-hour period.

GIVEN UNDER MY HAND AND THE GREAT SEAL OF THE STATE OF SOUTH CAROLINA, THIS 19th DAY OF MARCH, 2020.

HENRY MCMASTER
Governor

Executive Order No. 2020-12

WHEREAS, on March 13, 2020, the undersigned issued Executive Order No. 2020-08, declaring a State of Emergency based on a determination that the 2019 Novel Coronavirus ("COVID-19") poses an actual or imminent public health emergency for the State of South Carolina; and

WHEREAS, on March 13, 2020, the President of the United States declared that the COVID-19 outbreak in the United States constitutes a national emergency, which began on March 1, 2020; and

WHEREAS, in proactively preparing for and promptly responding to the evolving nature and scope of the aforementioned emergency, the undersigned has initiated and implemented various measures to address the significant public health, economic, and other impacts associated with COVID-19 and to mitigate the resulting burdens on healthcare providers, individuals, and businesses in the State of South Carolina; and

WHEREAS, on March 15, 2020, the undersigned issued Executive Order No. 2020-09, directing, *inter alia*, the closure of all public schools in the State of South Carolina for students and non-essential employees beginning Monday, March 16, 2020, and through Tuesday, March 31, 2020, and the postponement or rescheduling of any election scheduled to be held in this State on or before May 1, 2020, as well as urging that indoor and outdoor public gatherings be cancelled, postponed, or rescheduled, to the extent possible, or limited so as not to exceed one hundred (100) people; and

WHEREAS, on March 16, 2020, based on updated information and recommendations from the Centers for Disease Control and Prevention ("CDC"), the President of the United States and the White House Coronavirus Task Force issued new guidance—titled, "The President's Coronavirus Guidelines for America: 15 Days to Slow the Spread of Coronavirus (COVID-19)"—to help protect Americans during the global COVID-19 outbreak; and

WHEREAS, the President's Coronavirus Guidelines for America recommend, *inter alia*, that the American people "[a]void social gatherings in groups of more than 10 people"; "[a]void eating or drinking at bars, restaurants, and food courts—use drive-thru, pickup, or delivery options"; and "[a]void discretionary travel, shopping trips, and social visits"; and

WHEREAS, on March 17, 2020, the undersigned issued Executive Order No. 2020-10, directing additional emergency measures in response to the threat posed by COVID-19, to include temporarily prohibiting restaurants from providing certain food services for on-premises consumption and prohibiting events at government facilities that would convene fifty (50) or more people in a single room, area, or other confined indoor or outdoor space; and

WHEREAS, on March 19, 2020, the undersigned issued Executive Order No. 2020-11, initiating further emergency measures and suspending certain regulations to ensure the proper function and continuity of state government operations and the uninterrupted performance and provision of emergency, essential, or otherwise mission-critical state government services, while simultaneously undertaking additional measures to safeguard the health and safety of state employees, mitigate significant economic impacts and burdens on affected individuals and employers, and provide regulatory relief to expedite emergency response initiatives and enhance the availability of critical healthcare services; and

WHEREAS, the undersigned has determined that the rapidly evolving public health threat posed by COVID-19 warrants additional proactive action by the State of South Carolina and the implementation of further extraordinary measures to cope with the existing and anticipated emergency situation; and

WHEREAS, pursuant to section 25-1-440 of the South Carolina Code of Laws, as amended, when an emergency has been declared, the undersigned is authorized to issue, amend, and rescind "emergency proclamations and regulations," which shall "have the force and effect of law as long as the emergency exists,"

and to "suspend provisions of existing regulations prescribing procedures for conduct of state business if strict compliance with the provisions thereof would in any way prevent, hinder, or delay necessary action in coping with the emergency"; and

WHEREAS, in recognition of the foregoing, Executive Order No. 2020-10 "authorize[d] and direct[ed] any agency within the undersigned's Cabinet or any other department within the Executive Branch, as defined by section 1-30-10 of the South Carolina Code of Laws, as amended, through its respective director or secretary, to waive or 'suspend provisions of existing regulations prescribing procedures for conduct of state business if strict compliance with the provisions thereof would in any way prevent, hinder, or delay necessary action in coping with the emergency,' in accordance with section 25-1-440 of the South Carolina Code of Laws and other applicable law"; and

WHEREAS, for the aforementioned and other reasons, and pursuant to the cited authorities and other applicable law, the undersigned has determined that the evolving public health threat posed by COVID-19 requires additional proactive action by the State of South Carolina and the implementation of further extraordinary measures to slow the spread of COVID-19, minimize the strain on healthcare providers, and mitigate the ongoing economic impacts and other consequences for affected individuals and businesses throughout the State.

NOW, THEREFORE, by virtue of the authority vested in me as Governor of the State of South Carolina and pursuant to the Constitution and Laws of this State and the powers conferred upon me therein, I hereby order and direct as follows:

Section 1. Regulatory Flexibility to Facilitate "Social Distancing"

To facilitate "social distancing" practices and to mitigate the significant economic impacts of COVID-19 on individuals and businesses throughout the State, particularly restaurants and other food-service establishments, pursuant to the cited authorities and other applicable law, I hereby determine, order, and direct as follows:

A. I have determined that the State of South Carolina must promptly undertake and implement additional measures to slow the spread of COVID-19, minimize the current and future strain on healthcare providers, and mitigate the economic impacts on affected individuals and businesses. In furtherance of the foregoing, and in accordance with the President's Coronavirus Guidelines for America, the State must promote and facilitate effective "social distancing" practices, including "[a]void[ing] eating or drinking at bars, restaurants, and food courts—use drive-thru, pickup, or delivery options."

B. I hereby suspend Regulation 7–702.5 of the South Carolina Code of Regulations, which provides, in pertinent part, that "[a] permit holder, employee of a permit holder, or agent of a holder must not sell or deliver beer or wine to anyone who remains in a motor vehicle during the transaction."

C. I hereby authorize and direct the South Carolina Department of Revenue ("DOR") to implement, interpret, and apply the provisions of this Order, as necessary and appropriate and in accordance with and to the extent allowed by state and federal law, in a manner that will facilitate current holders of a valid Beer and Wine Permit ("Permit"), as set forth below, selling or delivering beer and wine in a sealed container for curbside delivery or pickup and off-premises consumption.

D. Subject to any further clarification, guidance, or regulations issued or promulgated by DOR, Permit holders electing to offer curbside delivery or pickup shall be subject to the following definitions, conditions, and restrictions:

1. Permit is defined as an on- or off-premises permit issued by DOR in accordance with Title 61, Chapter 4 of the South Carolina Code of Laws, with the exception of "special event" permits, for use at fairs and special functions, issued pursuant to section 61-4-550 of the South Carolina Code of Laws, as amended.

2. A retailer shall have a clearly designated delivery or pickup area abutting or adjacent to the retailer's place of business.

3. A customer who purchases beer or wine must prove at the time of curbside delivery or pickup that he is twenty-one (21) years of age or older by providing a valid government-issued identification.

4. A retailer shall not allow curbside delivery of beer or wine to, or pickup of beer or wine by, an intoxicated person or a person who is under twenty-one (21) years of age.

5. Any Permit holder's employee or agent who is responsible for delivering beer or wine in sealed containers for off-premises consumption to a customer's vehicle shall be eighteen (18) years of age or older.

6. Curbside delivery or pickup of "alcoholic liquors," as defined by section 61-6-20 of the South Carolina Code of Laws, as amended, shall be prohibited.

Section 2. General Provisions

This Order is not intended to create, and does not create, any individual right, privilege, or benefit, whether substantive or procedural, enforceable at law or in equity by any party against the State of South Carolina, its agencies, departments, political subdivisions, or other entities, or any officers, employees, or agents thereof, or any other person. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this Order is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this Order, as the undersigned would have issued this Order, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

This Order is effective immediately and shall remain in effect for the duration of the State of Emergency unless otherwise modified, amended, or rescinded by subsequent Order. Further proclamations, orders, and directives deemed necessary to ensure the fullest possible protection of life and property during this State of Emergency shall be issued orally by the undersigned and thereafter reduced to writing and published for dissemination within the succeeding 24-hour period.

GIVEN UNDER MY HAND AND THE GREAT SEAL OF THE STATE OF SOUTH CAROLINA, THIS 21st DAY OF MARCH, 2020.

HENRY MCMASTER
Governor

Executive Order No. 2020-13

WHEREAS, on March 13, 2020, the undersigned issued Executive Order No. 2020-08, declaring a State of Emergency based on a determination that the 2019 Novel Coronavirus ("COVID-19") poses an actual or imminent public health emergency for the State of South Carolina; and

WHEREAS, on March 13, 2020, the President of the United States declared that the COVID-19 outbreak in the United States constitutes a national emergency, which began on March 1, 2020; and

WHEREAS, in proactively preparing for and promptly responding to the evolving nature and scope of the aforementioned emergency, the undersigned has initiated and implemented various measures to address the

significant public health, economic, and other impacts associated with COVID-19 and to mitigate the resulting burdens on healthcare providers, individuals, and businesses in the State of South Carolina; and

WHEREAS, on March 15, 2020, the undersigned issued Executive Order No. 2020-09, directing, *inter alia*, the closure of all public schools in the State of South Carolina for students and non-essential employees beginning Monday, March 16, 2020, and through Tuesday, March 31, 2020, and the postponement or rescheduling of any election scheduled to be held in this State on or before May 1, 2020, as well as urging that indoor and outdoor public gatherings be cancelled, postponed, or rescheduled, to the extent possible, or limited so as not to exceed one hundred (100) people; and

WHEREAS, on March 16, 2020, based on updated information and recommendations from the Centers for Disease Control and Prevention ("CDC"), the President of the United States and the White House Coronavirus Task Force issued new guidance—titled, "The President's Coronavirus Guidelines for America: 15 Days to Slow the Spread of Coronavirus (COVID-19)"—to help protect Americans during the global COVID-19 outbreak; and

WHEREAS, the President's Coronavirus Guidelines for America recommend, *inter alia*, that the American people "[a]void social gatherings in groups of more than 10 people"; "[a]void eating or drinking at bars, restaurants, and food courts—use drive-thru, pickup, or delivery options"; and "[a]void discretionary travel, shopping trips, and social visits"; and

WHEREAS, on March 17, 2020, the undersigned issued Executive Order No. 2020-10, directing additional emergency measures in response to the threat posed by COVID-19, to include temporarily prohibiting restaurants from providing certain food services for on-premises consumption and prohibiting events at government facilities that would convene fifty (50) or more people in a single room, area, or other confined indoor or outdoor space; and

WHEREAS, in addition to the foregoing directives, Executive Order No. 2020-10 also "authorize[d] and direct[ed] any agency within the undersigned's Cabinet or any other department within the Executive Branch, as defined by section 1-30-10 of the South Carolina Code of Laws, as amended, through its respective director or secretary, to waive or 'suspend provisions of existing regulations prescribing procedures for conduct of state business if strict compliance with the provisions thereof would in any way prevent, hinder, or delay necessary action in coping with the emergency,' in accordance with section 25-1-440 of the South Carolina Code of Laws and other applicable law"; and

WHEREAS, on March 19, 2020, the undersigned issued Executive Order No. 2020-11, initiating further emergency measures and suspending certain regulations to ensure the proper function and continuity of state government operations and the uninterrupted performance and provision of emergency, essential, or otherwise mission-critical state government services, while simultaneously undertaking additional measures to safeguard the health and safety of state employees, mitigate significant economic impacts and burdens on affected individuals and employers, and provide regulatory relief to expedite emergency response initiatives and enhance the availability of critical healthcare services; and

WHEREAS, on March 21, 2020, the undersigned issued Executive Order No. 2020-12, directing additional actions to provide regulatory relief to facilitate "social distancing" practices and to mitigate the significant economic impacts of COVID-19 on individuals and businesses throughout the State, particularly restaurants and other food-service establishments; and

WHEREAS, the undersigned has determined that the rapidly evolving public health threat posed by COVID-19 warrants additional proactive action by the State of South Carolina and the implementation of further extraordinary measures to cope with the existing and anticipated emergency situation; and

WHEREAS, section 1-3-430 of the South Carolina Code of Laws, as amended, provides that when a state of emergency has been declared, the undersigned "may further, cope with such threats and danger, order and direct any person or group of persons to do any act which would in his opinion prevent or minimize danger to life, limb or property, or prevent a breach of the peace; and he may order any person or group of persons to refrain from doing any act or thing which would, in his opinion, endanger life, limb or property, or cause, or tend to cause, a breach of the peace, or endanger the peace and good order of the State or any section or community thereof, and he shall have full power by use of all appropriate available means to enforce such order or proclamation"; and

WHEREAS, pursuant to section 1-3-460 of the South Carolina Code of Laws, as amended, the foregoing and other emergency authority is "supplemental to and in aid of powers now vested in the Governor under the Constitution, statutory laws[,] and police powers of the State"; and

WHEREAS, in accordance with section 25-1-440 of the South Carolina Code of Laws, as amended, when an emergency has been declared, the undersigned is "responsible for the safety, security, and welfare of the State and is empowered with [certain] additional authority to adequately discharge this responsibility," to include issuing, amending, and rescinding "emergency proclamations and regulations," which shall "have the force and effect of law as long as the emergency exists"; and

WHEREAS, pursuant to section 25-1-440 of the South Carolina Code of Laws, when an emergency has been declared, the undersigned is further authorized to "suspend provisions of existing regulations prescribing procedures for conduct of state business if strict compliance with the provisions thereof would in any way prevent, hinder, or delay necessary action in coping with the emergency"; and

WHEREAS, in addition to the foregoing, section 25-1-440 of the South Carolina Code of Laws, authorizes the undersigned, during a declared emergency, to "transfer the direction, personnel, or functions of state departments, agencies, and commissions, or units thereof, for purposes of facilitating or performing emergency services as necessary or desirable," and to "compel performance by elected and appointed state, county, and municipal officials and employees of the emergency duties and functions assigned them in the State Emergency Plan or by Executive Order"; and

WHEREAS, as the elected Chief Executive of the State, the undersigned is further authorized, pursuant to section 25-1-440 of the South Carolina Code of Laws, to "direct and compel evacuation of all or part of the populace from any stricken or threatened area if this action is considered necessary for the preservation of life or other emergency mitigation, response, or recovery; to prescribe routes, modes of transportation, and destination in connection with evacuation; and to control ingress and egress at an emergency area, the movement of persons within the area, and the occupancy of premises therein"; and

WHEREAS, in the context of a public health emergency, section 25-1-440(e) of the South Carolina Code of Laws, also "authorizes the deployment and use of any resources and personnel including, but not limited to, local officers and employees qualified as first responders, to which the plans apply and the use or distribution of any supplies, equipment, materials, and facilities assembled, stockpiled, or arranged to be made available pursuant to this act"; and

WHEREAS, in accordance with section 16-7-10(A) of the South Carolina Code of Laws, as amended, "[i]n any area designated by the Governor in his proclamation that a state of emergency exists, and during the duration of the proclamation, it is unlawful for a person to: violate a provision in the proclamation including, but not limited to, any curfew set forth by the proclamation; congregate, unless authorized or in their homes, in groups of three or more and to refuse to disperse upon order of a law enforcement officer; or wilfully fail or refuse to comply with any lawful order or direction of any law enforcement officer"; and

WHEREAS, it is axiomatic that "[t]he health, welfare, and safety of the lives and property of the people are beyond question matters of public concern, and reasonable regulations and laws designed to preserve and protect the same are clearly contained in the police power inherent in the sovereign." 1980 S.C. Op. Att'y Gen. 142 (Sept. 5, 1980); and

WHEREAS, for the aforementioned and other reasons, and in recognition and furtherance of the undersigned's responsibility to provide for and ensure the health, safety, security, and welfare of the people of the State of South Carolina during a declared emergency, and pursuant to the cited authorities and other applicable law, the undersigned has determined that the evolving public health threat posed by COVID-19 requires additional proactive action by the State of South Carolina and the implementation and enforcement of further extraordinary measures to slow the spread of COVID-19, minimize the strain on healthcare providers, and otherwise respond to and mitigate the evolving public health threat posed by this emergency.

NOW, THEREFORE, by virtue of the authority vested in me as Governor of the State of South Carolina and pursuant to the Constitution and Laws of this State and the powers conferred upon me therein, I hereby order and direct as follows:

Section 1. Authorizing Law Enforcement to Maintain Order, Ensure Public Safety, and Preserve Public Health During the State of Emergency

To prepare for and respond to the ongoing and potential impacts associated with COVID-19, and the evolving public health threat posed by the same, and to maintain peace and good order during the State of Emergency, pursuant to the cited authorities and other applicable law, I hereby determine, order, and direct as follows:

A. I have determined that the State of South Carolina must promptly undertake and implement additional measures to slow the spread of COVID-19, minimize the current and future strain on healthcare providers, and otherwise respond to and mitigate the evolving public health threat posed by this emergency. It is axiomatic that "[t]he health, welfare, and safety of the lives and property of the people are beyond question matters of public concern, and reasonable regulations and laws designed to preserve and protect the same are clearly contained in the police power inherent in the sovereign." 1980 S.C. Op. Att'y Gen. 142 (Sept. 5, 1980). In recognition and furtherance of the undersigned's responsibility to provide for and ensure the health, safety, security, and welfare of the people of the State of South Carolina during a declared emergency, and in accordance with the President's Coronavirus Guidelines for America, the State must promote and facilitate effective "social distancing" practices, and as necessary and appropriate and to the extent allowed by state and federal law, require and enforce the same to maintain peace and good order during the State of Emergency.

B. I hereby authorize any and all law enforcement officers of the State, or any political subdivision thereof, to do whatever may be deemed necessary to maintain peace and good order during the State of Emergency and to enforce the provisions of any Order issued by the undersigned in connection with the same.

C. I hereby authorize, order, and direct any and all law enforcement officers of the State, or any political subdivision thereof, in accordance with section 16-7-10 of the South Carolina Code of Laws and other applicable law, to prohibit or disperse any congregation or gathering of people, unless authorized or in their homes, in groups of three (3) or more people, if any such law enforcement official determines, in their discretion, that any such congregation or gathering of people poses, or could pose, a threat to public health.

D. Pursuant to section 16-7-10(A) of the South Carolina Code of Laws, any individual who "refuse[s] to disperse upon order of a law enforcement officer," "wilfully fail[s] or refuse[s] to comply with any lawful order or direction of any law enforcement officer," or otherwise violates any provision of any Order issued by the undersigned in connection with the State of Emergency "is guilty of a misdemeanor and, upon conviction, must be fined not more than one hundred dollars or imprisoned for not more than thirty days."

E. In accordance with section 1-3-440(4) of the South Carolina Code of Laws, I further authorize, order, and direct any State, county, or city official to enforce the provisions of this Order and any prior or future Orders issued in connection with the present State of Emergency, as necessary and appropriate, in the courts of the State by injunction, mandamus, or other appropriate legal action.

F. I further authorize and instruct the South Carolina Law Enforcement Division, in consultation with the Attorney General of South Carolina, to provide any necessary and appropriate supplemental guidance to law enforcement agencies, departments, or officers of the State, or any political subdivision thereof, regarding the interpretation, application, or enforcement of section 16-7-10 of the South Carolina Code of Laws.

G. If or to the extent that any political subdivision of this State seeks to adopt or enforce a local ordinance, rule, regulation, or other restriction that conflicts with this Order, this Order shall supersede and preempt any such local ordinance, rule, regulation, or other restriction.

Section 2. Law Enforcement Assistance and Support

To maintain peace and good order during the State of Emergency, and to assist and support law enforcement authorities in connection with the same, pursuant to the cited authorities and other applicable law, I hereby determine, order, and direct as follows:

A. I hereby authorize law enforcement agencies or departments in this State to enter into mutual aid agreements in connection with the State of Emergency, pursuant to Title 23, Chapter 20 of the South Carolina Code of Laws, "for the purpose of providing the proper and prudent exercise of public safety functions across jurisdictional lines, including, but not limited to, multijurisdictional task forces, criminal investigations, patrol services, crowd control, traffic control and safety, and other emergency service situations."

B. In accordance with section 23-20-60 of the South Carolina Code of Laws, as amended, I hereby waive the requirement for a written mutual aid agreement for law enforcement services for the duration of the State of Emergency.

Section 3. General Provisions

This Order is not intended to create, and does not create, any individual right, privilege, or benefit, whether substantive or procedural, enforceable at law or in equity by any party against the State of South Carolina, its agencies, departments, political subdivisions, or other entities, or any officers, employees, or agents thereof, or any other person. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this Order is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this Order, as the undersigned would have issued this Order, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

This Order is effective immediately and shall remain in effect for the duration of the State of Emergency unless otherwise modified, amended, or rescinded by subsequent Order. Further proclamations, orders, and directives deemed necessary to ensure the fullest possible protection of life and property during this State of Emergency shall be issued orally by the undersigned and thereafter reduced to writing and published for dissemination within the succeeding 24-hour period.

GIVEN UNDER MY HAND AND THE GREAT SEAL OF THE STATE OF SOUTH CAROLINA, THIS 23rd DAY OF MARCH, 2020.

HENRY MCMASTER
Governor

Executive Order No. 2020-14

WHEREAS, on March 13, 2020, the undersigned issued Executive Order No. 2020-08, declaring a State of Emergency based on a determination that the 2019 Novel Coronavirus ("COVID-19") poses an actual or imminent public health emergency for the State of South Carolina; and

WHEREAS, on March 13, 2020, the President of the United States declared that the COVID-19 outbreak in the United States constitutes a national emergency, which began on March 1, 2020; and

WHEREAS, in proactively preparing for and promptly responding to the evolving nature and scope of the aforementioned emergency, the undersigned has initiated and implemented various measures to address the significant public health, economic, and other impacts associated with COVID-19 and to mitigate the resulting burdens on healthcare providers, individuals, and businesses in the State of South Carolina; and

WHEREAS, on March 15, 2020, the undersigned issued Executive Order No. 2020-09, directing, *inter alia*, the closure of all public schools in the State of South Carolina for students and non-essential employees beginning Monday, March 16, 2020, and through Tuesday, March 31, 2020, and the postponement or rescheduling of any election scheduled to be held in this State on or before May 1, 2020, as well as urging that indoor and outdoor public gatherings be cancelled, postponed, or rescheduled, to the extent possible, or limited so as not to exceed one hundred (100) people; and

WHEREAS, on March 16, 2020, based on updated information and recommendations from the Centers for Disease Control and Prevention ("CDC"), the President of the United States and the White House Coronavirus Task Force issued new guidance—titled, "The President's Coronavirus Guidelines for America: 15 Days to Slow the Spread of Coronavirus (COVID-19)"—to help protect Americans during the global COVID-19 outbreak; and

WHEREAS, the President's Coronavirus Guidelines for America recommend, *inter alia*, that the American people "[a]void social gatherings in groups of more than 10 people"; "[a]void eating or drinking at bars, restaurants, and food courts—use drive-thru, pickup, or delivery options"; and "[a]void discretionary travel, shopping trips, and social visits"; and

WHEREAS, on March 17, 2020, the undersigned issued Executive Order No. 2020-10, directing additional emergency measures in response to the threat posed by COVID-19, to include temporarily prohibiting restaurants from providing certain food services for on-premises consumption and prohibiting events at government facilities that would convene fifty (50) or more people in a single room, area, or other confined indoor or outdoor space; and

WHEREAS, on March 19, 2020, the undersigned issued Executive Order No. 2020-11, initiating further emergency measures and suspending certain regulations to ensure the proper function and continuity of state government operations and the uninterrupted performance and provision of emergency, essential, or otherwise mission-critical state government services, while simultaneously undertaking additional measures to safeguard the health and safety of state employees, mitigate significant economic impacts and burdens on affected individuals and employers, and provide regulatory relief to expedite emergency response initiatives and enhance the availability of critical healthcare services; and

WHEREAS, on March 21, 2020, the undersigned issued Executive Order No. 2020-12, initiating additional actions to provide regulatory relief to facilitate "social distancing" practices and to mitigate the significant economic impacts of COVID-19 on individuals and businesses throughout the State, particularly restaurants and other food-service establishments; and

WHEREAS, on March 23, 2020, the undersigned issued Executive Order No. 2020-13, authorizing and directing law enforcement officers of the State, or any political subdivision thereof, to, *inter alia*, prohibit or disperse any congregation or gathering of people, unless authorized or in their homes, in groups of three (3) or more people, if any such law enforcement official determines, in their discretion, that any such congregation or gathering of people poses, or could pose, a threat to public health; and

WHEREAS, Dr. Deborah Birx, the White House Coronavirus Response Coordinator, recently urged individuals who have traveled from the New York metropolitan area to self-quarantine for a period of fourteen (14) days, due to their potential exposure to COVID-19, to ensure that they do not facilitate the spread of COVID-19 to others; and

WHEREAS, Dr. Anthony Fauci, a member of the White House Coronavirus Task Force, has likewise called for individuals who have visited New York to self-quarantine for a period of fourteen (14) days so that the City of New York does not act as a "seeding point to the rest of the country"; and

WHEREAS, after the Governor of the State of Florida imposed a quarantine procedure for all air travelers arriving from the New York Tri-State Area (consisting of the States of New York, New Jersey, and Connecticut), which is experiencing substantial community spread of COVID-19, the Mayor of the City of New York remarked to the press, "I understand it. We are the epicenter"; and

WHEREAS, in addition to the Tri-State Area, the City of New Orleans, Louisiana is also experiencing substantial community spread of COVID-19; and

WHEREAS, the State of South Carolina has identified an actual or potential increase in the number of individuals travelling to this State from those areas experiencing significant community spread of COVID- 19 and/or where "shelter-in-place" orders have been implemented, including the New York Tri-State Area; and

WHEREAS, particularly in light of the foregoing developments, the undersigned has determined that the rapidly evolving public health threat posed by COVID-19 warrants additional proactive action by the State of South Carolina and the implementation of further extraordinary measures to cope with the existing and anticipated emergency situation; and

WHEREAS, section 1-3-430 of the South Carolina Code of Laws, as amended, provides that when a state of emergency has been declared, the undersigned "may further, cope with such threats and danger, order and direct any person or group of persons to do any act which would in his opinion prevent or minimize danger to life, limb or property, or prevent a breach of the peace; and he may order any person or group of persons to refrain from doing any act or thing which would, in his opinion, endanger life, limb or property, or cause, or tend to cause, a breach of the peace, or endanger the peace and good order of the State or any section or community thereof, and he shall have full power by use of all appropriate available means to enforce such order or proclamation"; and

WHEREAS, pursuant to section 1-3-460 of the South Carolina Code of Laws, as amended, the foregoing and other emergency authority is "supplemental to and in aid of powers now vested in the Governor under the Constitution, statutory laws[,] and police powers of the State"; and

WHEREAS, in accordance with section 25-1-440 of the South Carolina Code of Laws, as amended, when an emergency has been declared, the undersigned is "responsible for the safety, security, and welfare of the State and is empowered with [certain] additional authority to adequately discharge this responsibility," to include issuing, amending, and rescinding "emergency proclamations and regulations," which shall "have the force and effect of law as long as the emergency exists"; and

WHEREAS, pursuant to section 25-1-440 of the South Carolina Code of Laws, when an emergency has been declared, the undersigned is further authorized to "suspend provisions of existing regulations prescribing procedures for conduct of state business if strict compliance with the provisions thereof would in any way prevent, hinder, or delay necessary action in coping with the emergency"; and

WHEREAS, in addition to the foregoing, section 25-1-440 of the South Carolina Code of Laws, authorizes the undersigned, during a declared emergency, to "transfer the direction, personnel, or functions of state departments, agencies, and commissions, or units thereof, for purposes of facilitating or performing emergency services as necessary or desirable," and to "compel performance by elected and appointed state, county, and municipal officials and employees of the emergency duties and functions assigned them in the State Emergency Plan or by Executive Order"; and

WHEREAS, as the elected Chief Executive of the State, the undersigned is further authorized, pursuant to section 25-1-440 of the South Carolina Code of Laws, to "direct and compel evacuation of all or part of the populace from any stricken or threatened area if this action is considered necessary for the preservation of life or other emergency mitigation, response, or recovery; to prescribe routes, modes of transportation, and destination in connection with evacuation; and to control ingress and egress at an emergency area, the movement of persons within the area, and the occupancy of premises therein"; and

WHEREAS, in the context of a public health emergency, section 25-1-440(e) of the South Carolina Code of Laws, also "authorizes the deployment and use of any resources and personnel including, but not limited to, local officers and employees qualified as first responders, to which the plans apply and the use or distribution of any supplies, equipment, materials, and facilities assembled, stockpiled, or arranged to be made available pursuant to this act"; and

WHEREAS, in accordance with section 16-7-10(A) of the South Carolina Code of Laws, as amended, "[i]n any area designated by the Governor in his proclamation that a state of emergency exists, and during the duration of the proclamation, it is unlawful for a person to: violate a provision in the proclamation including, but not limited to, any curfew set forth by the proclamation; congregate, unless authorized or in their homes, in groups of three or more and to refuse to disperse upon order of a law enforcement officer; or wilfully fail or refuse to comply with any lawful order or direction of any law enforcement officer"; and

WHEREAS, it is axiomatic that "[t]he health, welfare, and safety of the lives and property of the people are beyond question matters of public concern, and reasonable regulations and laws designed to preserve and protect the same are clearly contained in the police power inherent in the sovereign," 1980 S.C. Op. Att'y Gen. 142 (Sept. 5, 1980); and

WHEREAS, for the aforementioned and other reasons, and in recognition and furtherance of the undersigned's responsibility to provide for and ensure the health, safety, security, and welfare of the people of the State of South Carolina during a declared emergency, and pursuant to the cited authorities and other applicable law, the undersigned has determined that the evolving public health threat posed by COVID-19 requires additional proactive action by the State of South Carolina and the implementation and enforcement of

further extraordinary measures to slow the spread of COVID-19, minimize the strain on healthcare providers, and otherwise respond to and mitigate the evolving public health threat posed by this emergency.

NOW, THEREFORE, by virtue of the authority vested in me as Governor of the State of South Carolina and pursuant to the Constitution and Laws of this State and the powers conferred upon me therein, I hereby order and direct as follows:

Section 1. Required Self-Quarantine for Individuals Entering South Carolina from High-Risk Areas

To prepare for and respond to the ongoing and potential impacts associated with COVID-19, and the evolving public health threat posed by the same, and to maintain peace and good order during the State of Emergency, pursuant to the cited authorities and other applicable law, I hereby determine, order, and direct as follows:

A. I hereby order and direct that an individual who enters the State of South Carolina from an area with substantial community spread, to include the Tri-State Area (consisting of the States of New York, New Jersey, and Connecticut) and the City of New Orleans, Louisiana, shall isolate or self-quarantine for a period of fourteen (14) days from the time of entry into the State of South Carolina or the duration of the individual's presence in South Carolina, whichever period is shorter. This Order shall not apply to individuals employed by airlines and individuals performing or assisting with military, healthcare, or emergency response operations. Any individual required by this Order, or any directives issued in connection therewith, to isolate or self-quarantine shall be responsible for any and all costs associated with such isolation or self-quarantine, including transportation, lodging, food, and medical care.

B. I hereby authorize and instruct the South Carolina Department of Health and Environmental Control ("DHEC") to provide any necessary and appropriate supplemental guidance regarding the interpretation, application, or enforcement of this Order.

Section 2. Enforcement

A. I hereby authorize any and all law enforcement officers of the State, or any political subdivision thereof, to do whatever may be deemed necessary to maintain peace and good order during the State of Emergency and to enforce the provisions of this Order and any prior or future Orders issued by the undersigned in connection with the present State of Emergency.

B. Pursuant to section 16-7-10(A) of the South Carolina Code of Laws, any individual who "refuse[s] to disperse upon order of a law enforcement officer," "wilfully fail[s] or refuse[s] to comply with any lawful order or direction of any law enforcement officer," or otherwise violates any provision of any Order issued by the undersigned in connection with the State of Emergency "is guilty of a misdemeanor and, upon conviction, must be fined not more than one hundred dollars or imprisoned for not more than thirty days."

C. In accordance with section 1-3-440(4) of the South Carolina Code of Laws, I further authorize, order, and direct any State, county, or city official to enforce the provisions of this Order and any prior or future Orders issued in connection with the present State of Emergency, as necessary and appropriate, in the courts of the State by injunction, mandamus, or other appropriate legal action.

D. In addition to the foregoing, I further authorize, order, and direct DHEC to exercise and utilize any and all necessary and appropriate emergency powers, as set forth in the Emergency Health Powers Act, codified as amended in Title 44, Chapter 4 of the South Carolina Code of Laws, to implement and enforce the provisions of this Order. In accordance with section 44-4-500 of the South Carolina Code of Laws, as amended, DHEC shall continue to "use every available means to prevent the transmission of infectious disease and to ensure that all cases of infectious disease are subject to proper control and treatment."

Section 3. General Provisions

A. This Order is not intended to create, and does not create, any individual right, privilege, or benefit, whether substantive or procedural, enforceable at law or in equity by any party against the State of South Carolina, its agencies, departments, political subdivisions, or other entities, or any officers, employees, or agents thereof, or any other person. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this Order is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this Order, as the undersigned would have issued this Order, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

B. If or to the extent that any political subdivision of this State seeks to adopt or enforce a local ordinance, rule, regulation, or other restriction that conflicts with this Order, this Order shall supersede and preempt any such local ordinance, rule, regulation, or other restriction.

C. This Order is effective immediately and shall remain in effect for the duration of the State of Emergency unless otherwise modified, amended, or rescinded by subsequent Order. Further proclamations, orders, and directives deemed necessary to ensure the fullest possible protection of life and property during this State of Emergency shall be issued orally by the undersigned and thereafter reduced to writing and published for dissemination within the succeeding 24-hour period.

GIVEN UNDER MY HAND AND THE GREAT SEAL OF THE STATE OF SOUTH CAROLINA, THIS 27th DAY OF MARCH, 2020.

HENRY MCMASTER
Governor

Executive Order No. 2020-15

WHEREAS, the State of South Carolina has taken, and must continue to take, all necessary and appropriate actions in confronting the unprecedented and evolving public health threat presented by the 2019 Novel Coronavirus ("COVID-19"); and

WHEREAS, to this end, the undersigned has, *inter alia*, convened the Public Health Emergency Plan Committee ("PHEPC"); activated the South Carolina Emergency Operations Plan ("Plan"); regularly conferred with state and federal agencies, officials, and experts, to include the South Carolina Department of Health and Environmental Control ("DHEC"), and the South Carolina Emergency Management Division ("EMD"); and requested that the General Assembly take action to make $45 million from the 2019–2020 Contingency Reserve Fund immediately available to DHEC in coordinating the State's public health response to COVID-19; and

WHEREAS, in addition to the foregoing, on March 11, 2020, the undersigned issued Executive Order No. 2020-07, suspending certain transportation-related rules and regulations, pursuant to 49 C.F.R. § 390.23 and section 56-5-70 of the South Carolina Code of Laws, as amended, for commercial vehicles and operators of commercial vehicles providing direct assistance to supplement state and local efforts and capabilities to protect public health and safety in connection with COVID-19; and

WHEREAS, on March 13, 2020, the undersigned issued Executive Order No. 2020-08, declaring a State of Emergency based on a determination that COVID-19 posed an actual or imminent public health emergency for the State of South Carolina; and

WHEREAS, on March 13, 2020, the President of the United States declared the ongoing COVID-19 outbreak a pandemic of sufficient severity and magnitude to warrant an emergency declaration for all states, tribes, territories, and the District of Columbia, pursuant to Section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121–5207 ("Stafford Act"); and

WHEREAS, on March 13, 2020, the President of the United States also declared that the COVID-19 pandemic in the United States constitutes a national emergency, pursuant to Sections 201 and 301 of the National Emergencies Act, 50 U.S.C. §§ 1601 *et seq.*, and consistent with Section 1135 of the Social Security Act, as amended (42 U.S.C. § 1320b-5), retroactive to March 1, 2020; and

WHEREAS, in proactively preparing for and promptly responding to the aforementioned emergency, the undersigned initiated and implemented various measures to address the significant public health, economic, and other impacts associated with COVID-19 and to mitigate the resulting burdens on healthcare providers, individuals, and businesses in the State of South Carolina; and

WHEREAS, on March 15, 2020, the undersigned issued Executive Order No. 2020-09, directing, *inter alia*, the closure of all public schools in the State of South Carolina for students and non-essential employees beginning Monday, March 16, 2020, and through Tuesday, March 31, 2020, and the postponement or rescheduling of any election scheduled to be held in this State on or before May 1, 2020, as well as urging that indoor and outdoor public gatherings be cancelled, postponed, or rescheduled, to the extent possible, or limited so as not to exceed one hundred (100) people; and

WHEREAS, on March 17, 2020, based on updated information and recommendations from the Centers for Disease Control and Prevention ("CDC"), the President of the United States, and the White House Coronavirus Task Force, the undersigned issued Executive Order No. 2020-10, directing additional emergency measures in response to the threat posed by COVID-19, to include temporarily prohibiting restaurants from providing certain food services for on-premises consumption and prohibiting events at government facilities that would convene fifty (50) or more people in a single room, area, or other confined indoor or outdoor space; and

WHEREAS, in addition to the foregoing directives, Executive Order No. 2020-10 also "authorize[d] and direct[ed] any agency within the undersigned's Cabinet or any other department within the Executive Branch, as defined by section 1-30-10 of the South Carolina Code of Laws, as amended, through its respective director or secretary, to waive or 'suspend provisions of existing regulations prescribing procedures for conduct of state business if strict compliance with the provisions thereof would in any way prevent, hinder, or delay necessary action in coping with the emergency,' in accordance with section 25-1-440 of the South Carolina Code of Laws and other applicable law"; and

WHEREAS, on March 19, 2020, the undersigned issued Executive Order No. 2020-11, initiating further emergency measures and suspending certain regulations to ensure the proper function and continuity of state government operations and the uninterrupted performance and provision of emergency, essential, or otherwise mission-critical state government services, while simultaneously undertaking additional measures to safeguard the health and safety of state employees, mitigate significant economic impacts and burdens on affected individuals and employers, and provide regulatory relief to expedite emergency response initiatives and enhance the availability of critical healthcare services; and

WHEREAS, on March 21, 2020, the undersigned issued Executive Order No. 2020-12, initiating additional actions to provide regulatory relief to facilitate "social distancing" practices and to mitigate the significant economic impacts of COVID-19 on individuals and businesses throughout the State, particularly restaurants and other food-service establishments; and

WHEREAS, on March 23, 2020, the undersigned issued Executive Order No. 2020-13, authorizing and directing law enforcement officers of the State, or any political subdivision thereof, to, *inter alia*, prohibit or disperse any congregation or gathering of people, unless authorized or in their homes, in groups of three (3) or

more people, if any such law enforcement official determines, in their discretion, that any such congregation or gathering of people poses, or could pose, a threat to public health; and

WHEREAS, on March 24, 2020, the undersigned requested that the President of the United States declare that a major disaster exists in the State of South Carolina pursuant to Section 401 of the Stafford Act; and

WHEREAS, on March 27, 2020, the President of the United States granted the undersigned's request and declared that a major disaster exists in the State of South Carolina and ordered federal assistance to supplement state, tribal, and local recovery efforts in the areas affected by the COVID-19 pandemic, with an effective date retroactive to January 20, 2020, and continuing; and

WHEREAS, on March 27, 2020, the undersigned issued Executive Order No. 2020-14, directing that individuals who enter the State of South Carolina from an area with substantial community spread of COVID-19 shall be required to isolate or self-quarantine for a period of fourteen (14) days from the time of entry into the State of South Carolina or the duration of the individual's presence in South Carolina, whichever period is shorter; and

WHEREAS, based on recent developments, to include the continued spread of COVID-19, the resulting strain on healthcare resources, and the significant economic consequences for individuals and businesses in this State, after consulting with numerous state and federal agencies, officials, and experts, the undersigned has determined that it is necessary and prudent to declare that a separate and distinct emergency exists due to the evolving nature and scope of the public health threat or other risks posed by COVID-19 and the actual, ongoing, and anticipated impacts associated with the same; and

WHEREAS, section 1-3-420 of the South Carolina Code of Laws, as amended, provides that "[t]he Governor, when in his opinion the facts warrant, shall, by proclamation, declare that, because of . . . a public health emergency . . . a danger exists to the person or property of any citizen and that the peace and tranquility of the State, or any political subdivision thereof, or any particular area of the State designated by him, is threatened, and because thereof an emergency, with reference to such threats and danger, exists"; and

WHEREAS, as the elected Chief Executive of the State, the undersigned is authorized pursuant to section 25-1-440 of the South Carolina Code of Laws, as amended, to "declare a state of emergency for all or part of the State if he finds a disaster or a public health emergency . . . has occurred, or that the threat thereof is imminent and extraordinary measures are considered necessary to cope with the existing or anticipated situation"; and

WHEREAS, in accordance with section 44-4-130 of the South Carolina Code of Laws, as amended, a "public health emergency" exists when there is an "occurrence or imminent risk of a qualifying health condition," which includes "an illness or health condition that may be caused by . . . epidemic or pandemic disease, or a novel infectious agent . . . that poses a substantial risk of a significant number of human fatalities [or] widespread illness"; and

WHEREAS, section 1-3-430 of the South Carolina Code of Laws, as amended, provides that when a state of emergency has been declared, the undersigned "may further, cope with such threats and danger, order and direct any person or group of persons to do any act which would in his opinion prevent or minimize danger to life, limb or property, or prevent a breach of the peace; and he may order any person or group of persons to refrain from doing any act or thing which would, in his opinion, endanger life, limb or property, or cause, or tend to cause, a breach of the peace, or endanger the peace and good order of the State or any section or community thereof, and he shall have full power by use of all appropriate available means to enforce such order or proclamation"; and

WHEREAS, pursuant to section 1-3-460 of the South Carolina Code of Laws, as amended, the foregoing and other emergency authority is "supplemental to and in aid of powers now vested in the Governor under the Constitution, statutory laws[,] and police powers of the State"; and

WHEREAS, in accordance with section 25-1-440 of the South Carolina Code of Laws, as amended, when an emergency has been declared, the undersigned is "responsible for the safety, security, and welfare of the State and is empowered with [certain] additional authority to adequately discharge this responsibility," to include issuing, amending, and rescinding "emergency proclamations and regulations," which shall "have the force and effect of law as long as the emergency exists"; and

WHEREAS, pursuant to section 25-1-440 of the South Carolina Code of Laws, when an emergency has been declared, the undersigned is further authorized to "suspend provisions of existing regulations prescribing procedures for conduct of state business if strict compliance with the provisions thereof would in any way prevent, hinder, or delay necessary action in coping with the emergency"; and

WHEREAS, in addition to the foregoing, section 25-1-440 of the South Carolina Code of Laws, authorizes the undersigned, during a declared emergency, to "transfer the direction, personnel, or functions of state departments, agencies, and commissions, or units thereof, for purposes of facilitating or performing emergency services as necessary or desirable," and to "compel performance by elected and appointed state, county, and municipal officials and employees of the emergency duties and functions assigned them in the State Emergency Plan or by Executive Order"; and

WHEREAS, the undersigned is further authorized, pursuant to section 25-1-440 of the South Carolina Code of Laws, to "direct and compel evacuation of all or part of the populace from any stricken or threatened area if this action is considered necessary for the preservation of life or other emergency mitigation, response, or recovery; to prescribe routes, modes of transportation, and destination in connection with evacuation; and to control ingress and egress at an emergency area, the movement of persons within the area, and the occupancy of premises therein"; and

WHEREAS, in the context of a public health emergency, section 25-1-440 of the South Carolina Code of Laws, also "authorizes the deployment and use of any resources and personnel including, but not limited to, local officers and employees qualified as first responders, to which the plans apply and the use or distribution of any supplies, equipment, materials, and facilities assembled, stockpiled, or arranged to be made available pursuant to this act"; and

WHEREAS, in accordance with section 16-7-10(A) of the South Carolina Code of Laws, as amended, "[i]n any area designated by the Governor in his proclamation that a state of emergency exists, and during the duration of the proclamation, it is unlawful for a person to: violate a provision in the proclamation including, but not limited to, any curfew set forth by the proclamation; congregate, unless authorized or in their homes, in groups of three or more and to refuse to disperse upon order of a law enforcement officer; or wilfully fail or refuse to comply with any lawful order or direction of any law enforcement officer"; and

WHEREAS, it is axiomatic that "[t]he health, welfare, and safety of the lives and property of the people are beyond question matters of public concern, and reasonable regulations and laws designed to preserve and protect the same are clearly contained in the police power inherent in the sovereign," 1980 S.C. Op. Att'y Gen. 142 (Sept. 5, 1980); and

WHEREAS, in issuing Executive Order No. 2020-08 and declaring an initial State of Emergency in connection with COVID-19, the undersigned's determination was made in accordance with section 44-4-130 of the South Carolina Code of Laws, as amended, and based on the "imminent risk of a qualifying health condition," which includes "an illness or health condition that may be caused by . . . epidemic or pandemic disease, or a novel infectious agent . . . that poses a substantial risk of a significant number of human fatalities [or] widespread illness"; and

WHEREAS, the public health threat posed by COVID-19 has since transitioned to a new and distinct stage, evolving from one that presented the "imminent risk of a qualifying health condition," to one that involves an actual and widespread "occurrence" of a "qualifying health condition," with confirmed cases of COVID-19 in over eighty-five percent (85%) of South Carolina's forty-six (46) counties; and

WHEREAS, the evolution of COVID-19 from an "imminent risk of a qualifying health condition," to an actual "occurrence" of a "qualifying health condition" or "pandemic" presents a unique and distinct public health emergency for the State of South Carolina, which must be dealt with on its own accord; and

WHEREAS, for the aforementioned and other reasons, and in recognition and furtherance of the undersigned's responsibility to provide for and ensure the health, safety, security, and welfare of the people of the State of South Carolina, the undersigned has determined that the occurrence of COVID-19 throughout significant portions of the State poses an actual, ongoing, and evolving public health threat to the State of South Carolina, which now represents a new and distinct emergency and requires additional proactive action by the State of South Carolina and the implementation and enforcement of further extraordinary measures to slow the spread of COVID-19, minimize the strain on healthcare providers, and otherwise respond to and mitigate the evolving public health threat posed by this emergency.

NOW, THEREFORE, by virtue of the authority vested in me as Governor of the State of South Carolina and pursuant to the Constitution and Laws of this State and the powers conferred upon me therein, I hereby declare that a State of Emergency exists in South Carolina. Accordingly, for the foregoing reasons and in accordance with the cited authorities and other applicable law, I further order and direct as follows:

Section 1. Emergency Measures

To prepare for and respond to the actual, ongoing, and evolving public health threat posed by COVID-19 and to mitigate the potential impacts associated with the same, pursuant to the cited authorities and other applicable law, I hereby determine, order, and direct as follows:

A. The State of South Carolina must take additional proactive action and implement further extraordinary measures to prepare for and respond to the actual, ongoing, and evolving public health threat posed by COVID-19, minimize the resulting strain on healthcare providers, and otherwise respond to and mitigate the significant impacts associated with the same.

B. I hereby memorialize and confirm my prior activation of the Plan and direct that the Plan be further placed into effect and that all prudent preparations be taken at the individual, local, and state levels to proactively prepare for and promptly respond to the threat posed by COVID-19. I further direct the continued utilization of all available resources of state government as reasonably necessary to address the current State of Emergency.

C. I hereby direct DHEC to utilize and exercise any and all emergency powers, as set forth in the Emergency Health Powers Act, codified as amended in Title 44, Chapter 4 of the South Carolina Code of Laws, deemed necessary to promptly and effectively address the current public health emergency. In accordance with section 44-4-500 of the South Carolina Code of Laws, as amended, DHEC shall continue to "use every available means to prevent the transmission of infectious disease and to ensure that all cases of infectious disease are subject to proper control and treatment." I further direct DHEC to restrict visitation to nursing homes and assisted living facilities, with the exception of end-of-life situations, as DHEC deems necessary and appropriate.

D. I hereby authorize and direct state correctional institutions and local detention facilities to suspend visitation processes and procedures, as necessary, during this State of Emergency.

E. I hereby place specified units and/or personnel of the South Carolina National Guard on State Active Duty, pursuant to section 25-1-1840 of the South Carolina Code of Laws, as amended, and direct the

Adjutant General to issue the requisite supplemental orders as he deems necessary and appropriate. I further order the activation of South Carolina National Guard personnel and the utilization of appropriate equipment at the discretion of the Adjutant General, and in coordination with the Director of EMD, to take necessary and prudent actions to assist the people of this State. I authorize Dual Status Command, as necessary, to allow the Adjutant General or his designee to serve as commander over both federal (Title 10) and state forces (National Guard in Title 32 and/or State Active Duty status).

F. I hereby order that all licensing and registration requirements regarding private security personnel or companies who are contracted with South Carolina security companies in protecting property and restoring essential services in South Carolina shall be suspended, and I direct the South Carolina Law Enforcement Division ("SLED") to initiate an emergency registration process for those personnel or companies for a period specified, and in a manner deemed appropriate, by the Chief of SLED.

G. I hereby declare that the prohibitions against price gouging pursuant to section 39-5-145 of the South Carolina Code of Laws, as amended, are in effect and shall remain in effect for the duration of this State of Emergency.

H. I hereby declare that the provisions of the following Orders shall remain in full force and effect in accordance with their respective terms for the duration of the State of Emergency declared herein, unless otherwise modified, amended, or rescinded below or by subsequent Order: Executive Order Nos. 2020-07, 2020-09, 2020-10, 2020-11, 2020-12, 2020-13, and 2020-14.

Section 2. School Closures

To provide for and protect the health, safety, and welfare of the people of this State and to minimize and control the spread of COVID-19, pursuant to the cited authorities and other applicable law, I hereby determine, order, and direct as follows:

A. Upon consultation with the Superintendent of Education, who has recommended and advised that, at this time, students, parents, and families should plan for South Carolina's schools to remain closed through the month of April, I have determined that extending the closure of public schools to students and non-essential employees is a necessary and appropriate action to protect the health, safety, and welfare of the people of this State and to minimize and control the spread of COVID-19.

B. I hereby direct the continued closure of all public schools in the State of South Carolina for students and non-essential employees for the duration of the State of Emergency, unless such directive is otherwise, modified, amended, extended, or rescinded. This Section applies to all students and employees of public schools, to include charter schools, in the State of South Carolina, with the exception of those emergency or other critical personnel designated as essential, or whose presence is otherwise deemed necessary, by the appropriate school district officials. I further authorize the requisite school district officials to make any necessary and appropriate decisions or arrangements to account for local needs and other unique circumstances, to include establishing or maintaining means to deliver virtual instruction and remote learning and assisting with or facilitating the distribution of food and the delivery of nutritional services.

C. I hereby authorize all state-supported colleges, universities, and technical colleges in the State of South Carolina, as necessary and appropriate and in accordance with and to the extent allowed by state and federal law, to complete the spring 2020 academic semester by delivering virtual and remote learning, by housing only out-of-state or displaced students, and by restricting on-campus services and activities to emergency or other critical personnel designated as essential, or whose presence is otherwise deemed necessary, by the appropriate college or university officials. I further authorize the requisite college, university, and technical college officials to continue to make any necessary and appropriate decisions or arrangements to account for specific needs and other unique circumstances or to deal with students, employees, or other critical personnel

designated as essential, or whose presence is otherwise deemed necessary, by the appropriate college, university, or technical college officials.

Section 3. Protection of First Responders

To ensure the uninterrupted performance and provision of emergency services and to maintain peace and good order during the State of Emergency, while simultaneously undertaking additional proactive measures to safeguard the health and safety of law enforcement authorities and other first responders, pursuant to the cited authorities and other applicable law, I hereby determine, order, and direct as follows:

A. The State of South Carolina must promptly undertake and implement additional proactive measures to safeguard the health and safety of law enforcement authorities and other first responders who risk potential exposure to COVID-19 while providing emergency and other essential services during the State of Emergency.

B. I hereby authorize and direct any and all 911 operators or other emergency dispatchers to ask any individual placing a call for service whether such individual or any member of their household has tested positive for COVID-19 or is exhibiting symptoms consistent with the same.

C. I hereby authorize and instruct DHEC, upon consultation with SLED, to provide any necessary and appropriate supplemental guidance regarding the interpretation, application, or enforcement of this Section.

Section 4. Transportation Waivers

To expedite the State of South Carolina's continued preparation for and response to the ongoing emergency conditions related to COVID-19 and to facilitate the prompt transportation and delivery of any critical resources, supplies, and personnel identified and deemed necessary in connection with the same, pursuant to the cited authorities and other applicable law, I hereby determine, order, and direct as follows:

A. I hereby amend Executive Order No. 2020-07, as modified by Executive Order No. 2020-08, pursuant to 49 C.F.R. § 390.23 and section 56-5-70 of the South Carolina Code of Laws, to extend the provisions thereof to commercial vehicles and operators of commercial vehicles operating in accordance with the provisions of the Federal Motor Carrier Safety Administration's Expanded Emergency Declaration Under 49 C.F.R. § 390.23 No. 2020-002 (Relating to COVID-19), responding to the declared emergency in the State of South Carolina, or otherwise assisting with the public health threat posed by COVID-19, as well as to commercial vehicles and operators of commercial vehicles transporting essential goods and products, such as food, water, medicine, medical supplies and equipment, fuels and petroleum products (to include fuel oil, diesel oil, gasoline, kerosene, propane, and liquid petroleum), livestock, poultry, feed for livestock and poultry, and crops and other agricultural products ready to be harvested (to include timber and wood chips).

Section 5. Enforcement

A. I hereby authorize any and all law enforcement officers of the State, or any political subdivision thereof, to do whatever may be deemed necessary to maintain peace and good order during the State of Emergency and to enforce the provisions of this Order and any prior or future Orders issued by the undersigned in connection with the present State of Emergency.

B. Pursuant to section 16-7-10(A) of the South Carolina Code of Laws, any individual who "refuse[s] to disperse upon order of a law enforcement officer," "wilfully fail[s] or refuse[s] to comply with any lawful order or direction of any law enforcement officer," or otherwise violates any provision of any Order issued by the undersigned in connection with the State of Emergency "is guilty of a misdemeanor and, upon conviction, must be fined not more than one hundred dollars or imprisoned for not more than thirty days."

C. In accordance with section 1-3-440(4) of the South Carolina Code of Laws, I further authorize, order, and direct any State, county, or city official to enforce the provisions of this Order and any prior or future Orders issued in connection with the present State of Emergency, as necessary and appropriate, in the courts of the State by injunction, mandamus, or other appropriate legal action.

D. In addition to the foregoing, I further authorize, order, and direct DHEC to exercise and utilize any and all necessary and appropriate emergency powers, as set forth in the Emergency Health Powers Act, codified as amended in Title 44, Chapter 4 of the South Carolina Code of Laws, to implement and enforce the provisions of this Order. In accordance with section 44-4-500 of the South Carolina Code of Laws, as amended, DHEC shall continue to "use every available means to prevent the transmission of infectious disease and to ensure that all cases of infectious disease are subject to proper control and treatment."

Section 6. General Provisions

A. This Order is not intended to create, and does not create, any individual right, privilege, or benefit, whether substantive or procedural, enforceable at law or in equity by any party against the State of South Carolina, its agencies, departments, political subdivisions, or other entities, or any officers, employees, or agents thereof, or any other person. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this Order is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this Order, as the undersigned would have issued this Order, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

B. If or to the extent that any political subdivision of this State seeks to adopt or enforce a local ordinance, rule, regulation, or other restriction that conflicts with this Order, this Order shall supersede and preempt any such local ordinance, rule, regulation, or other restriction.

C. This Order is effective immediately and shall remain in effect for a period of fifteen (15) days unless otherwise modified, amended, or rescinded by subsequent Order. Further proclamations, orders, and directives deemed necessary to ensure the fullest possible protection of life and property during this State of Emergency shall be issued orally by the undersigned and thereafter reduced to writing and published for dissemination within the succeeding 24-hour period.

GIVEN UNDER MY HAND AND THE GREAT SEAL OF THE STATE OF SOUTH CAROLINA, THIS 28th DAY OF MARCH, 2020.

HENRY MCMASTER
Governor

Executive Order No. 2020-16

WHEREAS, the State of South Carolina has taken, and must continue to take, all necessary and appropriate actions in confronting the unprecedented and evolving public health threat presented by the 2019 Novel Coronavirus ("COVID-19"); and

WHEREAS, to this end, the undersigned has, *inter alia*, convened the Public Health Emergency Plan Committee ("PHEPC"); activated the South Carolina Emergency Operations Plan ("Plan"); regularly conferred with state and federal agencies, officials, and experts, to include the South Carolina Department of Health and Environmental Control ("DHEC"), and the South Carolina Emergency Management Division ("EMD"); and

requested that the General Assembly take action to make $45 million from the 2019–2020 Contingency Reserve Fund immediately available to DHEC in coordinating the State's public health response to COVID-19; and

WHEREAS, in addition to the foregoing, on March 11, 2020, the undersigned issued Executive Order No. 2020-07, suspending certain transportation-related rules and regulations, pursuant to 49 C.F.R. § 390.23 and section 56-5-70 of the South Carolina Code of Laws, as amended, for commercial vehicles and operators of commercial vehicles providing direct assistance to supplement state and local efforts and capabilities to protect public health and safety in connection with COVID-19; and

WHEREAS, on March 13, 2020, the undersigned issued Executive Order No. 2020-08, declaring a State of Emergency based on a determination that COVID-19 posed an imminent public health emergency for the State of South Carolina; and

WHEREAS, on March 13, 2020, the President of the United States declared the ongoing COVID-19 outbreak a pandemic of sufficient severity and magnitude to warrant an emergency declaration for all states, tribes, territories, and the District of Columbia, pursuant to Section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121–5207 ("Stafford Act"); and

WHEREAS, on March 13, 2020, the President of the United States also declared that the COVID-19 pandemic in the United States constitutes a national emergency, pursuant to Sections 201 and 301 of the National Emergencies Act, 50 U.S.C. §§ 1601 *et seq.*, and consistent with Section 1135 of the Social Security Act, as amended (42 U.S.C. § 1320b-5), retroactive to March 1, 2020; and

WHEREAS, in proactively preparing for and promptly responding to the aforementioned emergency, the undersigned subsequently issued Executive Order Nos. 2020-09, 2020-10, 2020-11, 2020-12, 2020-13, and 2020-14, initiating and directing various emergency measures to address the significant public health, economic, and other impacts associated with COVID-19 and to mitigate the resulting burdens on healthcare providers, individuals, and businesses in the State of South Carolina; and

WHEREAS, on March 28, 2020, the undersigned issued Executive Order No. 2020-15, declaring a new, separate, and distinct State of Emergency based on a determination that COVID-19 posed an actual, ongoing, and evolving public health threat to the State of South Carolina; and

WHEREAS, based on recent developments, to include the continued spread of COVID-19, the resulting strain on healthcare resources, and the significant economic consequences for individuals and businesses in this State, after consulting with numerous state and federal agencies, officials, and experts, the undersigned has determined that it is necessary and prudent to take additional proactive action and implement further extraordinary measures to prepare for and respond to the actual, ongoing, and evolving public health threat posed by COVID-19; and

WHEREAS, section 1-3-430 of the South Carolina Code of Laws, as amended, provides that when a state of emergency has been declared, the undersigned "may further, cope with such threats and danger, order and direct any person or group of persons to do any act which would in his opinion prevent or minimize danger to life, limb or property, or prevent a breach of the peace; and he may order any person or group of persons to refrain from doing any act or thing which would, in his opinion, endanger life, limb or property, or cause, or tend to cause, a breach of the peace, or endanger the peace and good order of the State or any section or community thereof, and he shall have full power by use of all appropriate available means to enforce such order or proclamation"; and

WHEREAS, pursuant to section 1-3-460 of the South Carolina Code of Laws, as amended, the foregoing and other emergency authority is "supplemental to and in aid of powers now vested in the Governor under the Constitution, statutory laws[,] and police powers of the State"; and

WHEREAS, in accordance with section 25-1-440 of the South Carolina Code of Laws, as amended, when an emergency has been declared, the undersigned is "responsible for the safety, security, and welfare of the State and is empowered with [certain] additional authority to adequately discharge this responsibility," to include issuing, amending, and rescinding "emergency proclamations and regulations," which shall "have the force and effect of law as long as the emergency exists"; and

WHEREAS, pursuant to section 25-1-440 of the South Carolina Code of Laws, when an emergency has been declared, the undersigned is further authorized to "suspend provisions of existing regulations prescribing procedures for conduct of state business if strict compliance with the provisions thereof would in any way prevent, hinder, or delay necessary action in coping with the emergency"; and

WHEREAS, in addition to the foregoing, section 25-1-440 of the South Carolina Code of Laws, authorizes the undersigned, during a declared emergency, to "transfer the direction, personnel, or functions of state departments, agencies, and commissions, or units thereof, for purposes of facilitating or performing emergency services as necessary or desirable," and to "compel performance by elected and appointed state, county, and municipal officials and employees of the emergency duties and functions assigned them in the State Emergency Plan or by Executive Order"; and

WHEREAS, the undersigned is further authorized, pursuant to section 25-1-440 of the South Carolina Code of Laws, to "direct and compel evacuation of all or part of the populace from any stricken or threatened area if this action is considered necessary for the preservation of life or other emergency mitigation, response, or recovery; to prescribe routes, modes of transportation, and destination in connection with evacuation; and to control ingress and egress at an emergency area, the movement of persons within the area, and the occupancy of premises therein"; and

WHEREAS, in accordance with section 16-7-10(A) of the South Carolina Code of Laws, as amended, "[i]n any area designated by the Governor in his proclamation that a state of emergency exists, and during the duration of the proclamation, it is unlawful for a person to: violate a provision in the proclamation including, but not limited to, any curfew set forth by the proclamation; congregate, unless authorized or in their homes, in groups of three or more and to refuse to disperse upon order of a law enforcement officer; or wilfully fail or refuse to comply with any lawful order or direction of any law enforcement officer"; and

WHEREAS, it is axiomatic that "[t]he health, welfare, and safety of the lives and property of the people are beyond question matters of public concern, and reasonable regulations and laws designed to preserve and protect the same are clearly contained in the police power inherent in the sovereign," 1980 S.C. Op. Att'y Gen. 142 (Sept. 5, 1980); and

WHEREAS, notwithstanding the instructions and recommendations of state and federal public health officials, individuals have continued to patronize the State's beaches and access the State's public waterways without adhering to "social distancing" practices; and

WHEREAS, for the aforementioned and other reasons, and in recognition and furtherance of the undersigned's responsibility to provide for and ensure the health, safety, security, and welfare of the people of the State of South Carolina, the undersigned has determined that the State of South Carolina must take additional proactive action and implement further extraordinary measures to prepare for and respond to the actual, ongoing, and evolving public health threat posed by COVID-19, minimize the resulting strain on healthcare providers, and otherwise respond to and mitigate the significant impacts associated with the same.

NOW, THEREFORE, by virtue of the authority vested in me as Governor of the State of South Carolina and pursuant to the Constitution and Laws of this State and the powers conferred upon me therein, I hereby order and direct as follows:

Section 1. Emergency Access Restrictions for Public Beaches and Waters

To prepare for and respond to the actual, ongoing, and evolving public health threat posed by COVID-19 and to mitigate the potential impacts associated with the same, pursuant to the cited authorities and other applicable law, I hereby determine, order, and direct as follows:

A. The State of South Carolina must take additional proactive action and implement further extraordinary measures to prepare for and respond to the actual, ongoing, and evolving public health threat posed by COVID-19, minimize the resulting strain on healthcare providers, and otherwise respond to and mitigate the significant impacts associated with the same. In furtherance of the foregoing, and in view of the fact that individuals have continued to patronize the State's beaches and access the State's public waterways without heeding the instructions of public health officials or adhering to appropriate "social distancing" practices, further action is necessary to ensure the health, safety, security, and welfare of the people of the State of South Carolina.

B. I hereby order and direct that any and all public beach access points, to include any adjacent or associated public parking lots or other public facilities, shall be closed to public access for recreational purposes for the duration of the State of Emergency. Accordingly, I hereby suspend, in accordance with section 25-1-440 of the South Carolina Code of Laws and other applicable law, any existing regulations that conflict or are otherwise inconsistent with this Order or "if strict compliance with the provisions thereof would in any way prevent, hinder, or delay necessary action in coping with the emergency," to include Regulation 30–11(D)(3) of the South Carolina Code of Regulations, which provides that DHEC "shall promote public access to the beaches of this state."

C. I hereby order and direct that any and all public piers, docks, wharfs, boat ramps, and boat landings providing public access to the public waters of this State, to include any adjacent or associated public parking lots or other public facilities, shall be closed to public access for recreational purposes for the duration of the State of Emergency. Subject to any further clarification, guidance, rules, regulations, or restrictions issued or promulgated by the South Carolina Department of Natural Resources ("DNR"), as authorized herein below, I further direct that the beaching or rafting of boats, whether on a sandbar, lakeshore, riverbank, or island, is prohibited for the duration of the State of Emergency. Vessels must remain underway at all times unless exigent circumstances exist. Anchoring to fish is allowed; however, rafting is prohibited under all circumstances. This Section does not apply to individuals possessing a current, valid commercial fishing license or permit to the extent such individuals may seek to utilize or rely upon public piers, docks, wharfs, boat ramps, or boat landings in connection with commercial fishing activities.

D. I hereby authorize and direct DNR, in consultation with DHEC and the Attorney General of South Carolina, to provide or issue any necessary and appropriate supplemental guidance, rules, regulations, or restrictions regarding the application of this Section or the interpretation, application, or enforcement of section 16-7-10 of the South Carolina Code of Laws.

E. In accordance with article XIV, section 4 of the South Carolina Constitution, this Section does not enlarge or infringe upon the existing rights of individuals to access the navigable waters of this State or the rights of owners of private property adjacent to the public beaches or public waterways of this State; however, any such individuals are still subject to the provisions of prior and future Orders issued by the undersigned in connection with the State of Emergency, to include Executive Order No. 2020-13, as extended by Executive Order No. 2020-15, which expressly authorizes any and all law enforcement officers of the State, or any political subdivision thereof, to prohibit or disperse any congregation or gathering of people, unless authorized or in their homes, in groups of three (3) or more people, if any such congregation or gathering is deemed to pose, or could pose, a threat to public health.

Section 2. Enforcement

A. I hereby authorize any and all law enforcement officers of the State, or any political subdivision thereof, to do whatever may be deemed necessary to maintain peace and good order during the State of Emergency and to enforce the provisions of this Order and any prior or future Orders issued by the undersigned in connection with the present State of Emergency.

B. Pursuant to section 16-7-10(A) of the South Carolina Code of Laws, any individual who "refuse[s] to disperse upon order of a law enforcement officer," "wilfully fail[s] or refuse[s] to comply with any lawful order or direction of any law enforcement officer," or otherwise violates any provision of any Order issued by the undersigned in connection with the State of Emergency "is guilty of a misdemeanor and, upon conviction, must be fined not more than one hundred dollars or imprisoned for not more than thirty days."

C. In accordance with section 1-3-440(4) of the South Carolina Code of Laws, I further authorize, order, and direct any State, county, or city official to enforce the provisions of this Order and any prior or future Orders issued in connection with the present State of Emergency, as necessary and appropriate, in the courts of the State by injunction, mandamus, or other appropriate legal action.

D. In addition to the foregoing, I further authorize, order, and direct DHEC to exercise and utilize any and all necessary and appropriate emergency powers, as set forth in the Emergency Health Powers Act, codified as amended in Title 44, Chapter 4 of the South Carolina Code of Laws, to implement and enforce the provisions of this Order. In accordance with section 44-4-500 of the South Carolina Code of Laws, as amended, DHEC shall continue to "use every available means to prevent the transmission of infectious disease and to ensure that all cases of infectious disease are subject to proper control and treatment."

Section 3. General Provisions

A. This Order is not intended to create, and does not create, any individual right, privilege, or benefit, whether substantive or procedural, enforceable at law or in equity by any party against the State of South Carolina, its agencies, departments, political subdivisions, or other entities, or any officers, employees, or agents thereof, or any other person. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this Order is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this Order, as the undersigned would have issued this Order, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

B. If or to the extent that any political subdivision of this State seeks to adopt or enforce a local ordinance, rule, regulation, or other restriction that conflicts with this Order, this Order shall supersede and preempt any such local ordinance, rule, regulation, or other restriction.

C. This Order is effective immediately and shall remain in effect for the duration of the State of Emergency unless otherwise modified, amended, or rescinded by subsequent Order. Further proclamations, orders, and directives deemed necessary to ensure the fullest possible protection of life and property during this State of Emergency shall be issued orally by the undersigned and thereafter reduced to writing and published for dissemination within the succeeding 24-hour period.

GIVEN UNDER MY HAND AND THE GREAT SEAL OF THE STATE OF SOUTH CAROLINA, THIS 30th DAY OF MARCH, 2020.

HENRY MCMASTER
Governor

Executive Order No. 2020-17

WHEREAS, the State of South Carolina has taken, and must continue to take, all necessary and appropriate actions in confronting the unprecedented and evolving public health threat presented by the 2019 Novel Coronavirus ("COVID-19"), cases of which have now been identified and reported in forty-two (42) of the State's forty-six (46) counties; and

WHEREAS, to this end, the undersigned has, *inter alia*, convened the Public Health Emergency Plan Committee ("PHEPC"); activated the South Carolina Emergency Operations Plan ("Plan"); regularly conferred with state and federal agencies, officials, and experts, to include the South Carolina Department of Health and Environmental Control ("DHEC"), and the South Carolina Emergency Management Division ("EMD"); and requested that the General Assembly take action to make $45 million from the 2019–2020 Contingency Reserve Fund immediately available to DHEC in coordinating the State's public health response to COVID-19; and

WHEREAS, in addition to the foregoing, on March 11, 2020, the undersigned issued Executive Order No. 2020-07, suspending certain transportation-related rules and regulations, pursuant to 49 C.F.R. § 390.23 and section 56-5-70 of the South Carolina Code of Laws, as amended, for commercial vehicles and operators of commercial vehicles providing direct assistance to supplement state and local efforts and capabilities to protect public health and safety in connection with COVID-19; and

WHEREAS, on March 13, 2020, the undersigned issued Executive Order No. 2020-08, declaring a State of Emergency based on a determination that COVID-19 posed an imminent public health emergency for the State of South Carolina; and

WHEREAS, on March 13, 2020, the President of the United States declared the ongoing COVID-19 outbreak a pandemic of sufficient severity and magnitude to warrant an emergency declaration for all states, tribes, territories, and the District of Columbia, pursuant to Section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121–5207 ("Stafford Act"); and

WHEREAS, on March 13, 2020, the President of the United States also declared that the COVID-19 pandemic in the United States constitutes a national emergency, pursuant to Sections 201 and 301 of the National Emergencies Act, 50 U.S.C. §§ 1601 *et seq.*, and consistent with Section 1135 of the Social Security Act, as amended (42 U.S.C. § 1320b-5), retroactive to March 1, 2020; and

WHEREAS, on March 16, 2020, based on updated information and recommendations from the Centers for Disease Control and Prevention ("CDC"), the President of the United States and the White House Coronavirus Task Force issued new guidance—titled, "The President's Coronavirus Guidelines for America: 15 Days to Slow the Spread of Coronavirus (COVID-19)"—to help protect Americans during the global COVID-19 outbreak; and

WHEREAS, the President's Coronavirus Guidelines for America recommend, *inter alia*, that the American people "[w]ork or engage in schooling from home whenever possible"; "[a]void social gatherings in groups of more than 10 people"; "[a]void eating or drinking at bars, restaurants, and food courts—use drive-thru, pickup, or delivery options"; and "[a]void discretionary travel, shopping trips, and social visits"; and

WHEREAS, in proactively preparing for and promptly responding to the aforementioned emergency, the undersigned initiated and implemented various measures to address the significant public health, economic, and other impacts associated with COVID-19 and to mitigate the resulting burdens on healthcare providers, individuals, and businesses in the State of South Carolina; and

WHEREAS, on March 15, 2020, the undersigned issued Executive Order No. 2020-09, directing, *inter alia*, the closure of all public schools in the State of South Carolina for students and non-essential employees beginning Monday, March 16, 2020, and through Tuesday, March 31, 2020, and the postponement or

rescheduling of any election scheduled to be held in this State on or before May 1, 2020, as well as urging that indoor and outdoor public gatherings be cancelled, postponed, or rescheduled, to the extent possible, or limited so as not to exceed one hundred (100) people; and

WHEREAS, on March 17, 2020, based on updated information and recommendations from the CDC, the President of the United States, and the White House Coronavirus Task Force, the undersigned issued Executive Order No. 2020-10, directing additional emergency measures in response to the threat posed by COVID-19, to include temporarily prohibiting restaurants from providing certain food services for on-premises consumption and prohibiting events at government facilities that would convene fifty (50) or more people in a single room, area, or other confined indoor or outdoor space; and

WHEREAS, in addition to the foregoing directives, Executive Order No. 2020-10 also "authorize[d] and direct[ed] any agency within the undersigned's Cabinet or any other department within the Executive Branch, as defined by section 1-30-10 of the South Carolina Code of Laws, as amended, through its respective director or secretary, to waive or 'suspend provisions of existing regulations prescribing procedures for conduct of state business if strict compliance with the provisions thereof would in any way prevent, hinder, or delay necessary action in coping with the emergency,' in accordance with section 25-1-440 of the South Carolina Code of Laws and other applicable law"; and

WHEREAS, on March 19, 2020, the undersigned issued Executive Order No. 2020-11, initiating further emergency measures and suspending certain regulations to ensure the proper function and continuity of state government operations and the uninterrupted performance and provision of emergency, essential, or otherwise mission-critical state government services, while simultaneously undertaking additional measures to safeguard the health and safety of state employees, mitigate significant economic impacts and burdens on affected individuals and employers, and provide regulatory relief to expedite emergency response initiatives and enhance the availability of critical healthcare services; and

WHEREAS, on March 21, 2020, the undersigned issued Executive Order No. 2020-12, initiating additional actions to provide regulatory relief to facilitate "social distancing" practices and to mitigate the significant economic impacts of COVID-19 on individuals and businesses throughout the State, particularly restaurants and other food-service establishments; and

WHEREAS, on March 23, 2020, the undersigned issued Executive Order No. 2020-13, authorizing and directing law enforcement officers of the State, or any political subdivision thereof, to, *inter alia*, prohibit or disperse any congregation or gathering of people, unless authorized or in their homes, in groups of three (3) or more people, if any such law enforcement official determines, in their discretion, that any such congregation or gathering of people poses, or could pose, a threat to public health; and

WHEREAS, on March 24, 2020, the undersigned requested that the President of the United States declare that a major disaster exists in the State of South Carolina pursuant to Section 401 of the Stafford Act; and

WHEREAS, on March 27, 2020, the President of the United States granted the undersigned's aforementioned request and declared that a major disaster exists in the State of South Carolina and ordered federal assistance to supplement state, tribal, and local recovery efforts in the areas affected by the COVID-19 pandemic, with an effective date retroactive to January 20, 2020, and continuing; and

WHEREAS, on March 27, 2020, the undersigned issued Executive Order No. 2020-14, directing that individuals who enter the State of South Carolina from an area with substantial community spread of COVID-19 shall be required to isolate or self-quarantine for a period of fourteen (14) days from the time of entry into the State of South Carolina or the duration of the individual's presence in South Carolina, whichever period is shorter; and

WHEREAS, on March 28, 2020, the undersigned issued Executive Order No. 2020-15, declaring a new, separate, and distinct State of Emergency based on a determination that COVID-19 posed an actual, ongoing, and evolving public health threat to the State of South Carolina; and

WHEREAS, on March 29, 2020, the President of the United States extended the provisions of his Coronavirus Guidelines for America until April 30, 2020, based on the ongoing nature and evolving scope of the global COVID-19 pandemic; and

WHEREAS, on March 30, 2020, the undersigned issued Executive Order No. 2020-16, directing that any and all public beach access points and public piers, docks, wharfs, boat ramps, and boat landings that provide public access to the public waters of this State shall be closed to public access for recreational purposes for the duration of the State of Emergency; and

WHEREAS, in light of the continued spread of COVID-19 and the resulting strain on healthcare resources, after consulting with numerous state and federal agencies, officials, and experts, the undersigned has determined that it is necessary and prudent to take additional proactive action and implement further extraordinary measures to prepare for and respond to the actual, ongoing, and evolving public health threat posed by COVID-19; and

WHEREAS, section 1-3-430 of the South Carolina Code of Laws, as amended, provides that when a state of emergency has been declared, the undersigned "may further, cope with such threats and danger, order and direct any person or group of persons to do any act which would in his opinion prevent or minimize danger to life, limb or property, or prevent a breach of the peace; and he may order any person or group of persons to refrain from doing any act or thing which would, in his opinion, endanger life, limb or property, or cause, or tend to cause, a breach of the peace, or endanger the peace and good order of the State or any section or community thereof, and he shall have full power by use of all appropriate available means to enforce such order or proclamation"; and

WHEREAS, pursuant to section 1-3-460 of the South Carolina Code of Laws, as amended, the foregoing and other emergency authority is "supplemental to and in aid of powers now vested in the Governor under the Constitution, statutory laws[,] and police powers of the State"; and

WHEREAS, in accordance with section 25-1-440 of the South Carolina Code of Laws, as amended, when an emergency has been declared, the undersigned is "responsible for the safety, security, and welfare of the State and is empowered with [certain] additional authority to adequately discharge this responsibility," to include issuing, amending, and rescinding "emergency proclamations and regulations," which shall "have the force and effect of law as long as the emergency exists"; and

WHEREAS, in addition to the foregoing, section 25-1-440 of the South Carolina Code of Laws, authorizes the undersigned, during a declared emergency, to "transfer the direction, personnel, or functions of state departments, agencies, and commissions, or units thereof, for purposes of facilitating or performing emergency services as necessary or desirable," and to "compel performance by elected and appointed state, county, and municipal officials and employees of the emergency duties and functions assigned them in the State Emergency Plan or by Executive Order"; and

WHEREAS, the undersigned is further authorized, pursuant to section 25-1-440 of the South Carolina Code of Laws, to "direct and compel evacuation of all or part of the populace from any stricken or threatened area if this action is considered necessary for the preservation of life or other emergency mitigation, response, or recovery; to prescribe routes, modes of transportation, and destination in connection with evacuation; and to control ingress and egress at an emergency area, the movement of persons within the area, and the occupancy of premises therein"; and

WHEREAS, pursuant to section 25-1-440 of the South Carolina Code of Laws, the undersigned may authorize a party to exceed the terms of any curfew imposed if "the party is a business that sells emergency commodities, an employee of a business that sells emergency commodities, or a local official," and "exceeding the terms of the curfew is necessary to ensure emergency commodities are available to the public"; and

WHEREAS, in accordance with section 16-7-10(A) of the South Carolina Code of Laws, as amended, "[i]n any area designated by the Governor in his proclamation that a state of emergency exists, and during the duration of the proclamation, it is unlawful for a person to: violate a provision in the proclamation including, but not limited to, any curfew set forth by the proclamation; congregate, unless authorized or in their homes, in groups of three or more and to refuse to disperse upon order of a law enforcement officer; or wilfully fail or refuse to comply with any lawful order or direction of any law enforcement officer"; and

WHEREAS, it is axiomatic that "[t]he health, welfare, and safety of the lives and property of the people are beyond question matters of public concern, and reasonable regulations and laws designed to preserve and protect the same are clearly contained in the police power inherent in the sovereign," 1980 S.C. Op. Att'y Gen. 142 (Sept. 5, 1980); and

WHEREAS, for the aforementioned and other reasons, and in recognition and furtherance of the undersigned's authority and responsibility to provide for and ensure the health, safety, security, and welfare of the people of the State of South Carolina, the undersigned has determined that the State of South Carolina must take additional proactive action and implement further extraordinary measures designed to slow the spread of COVID-19 and limit the resulting strain on healthcare resources, to include closing or restricting public access to certain "non-essential" businesses, venues, facilities, services, and activities in the State.

NOW, THEREFORE, by virtue of the authority vested in me as Governor of the State of South Carolina and pursuant to the Constitution and Laws of this State and the powers conferred upon me therein, I hereby order and direct as follows:

Section 1. Closure of Non-Essential Businesses, Venues, Facilities, Services, and Activities for Public Use

To prepare for and respond to the actual, ongoing, and evolving public health threat posed by COVID-19 and to mitigate the significant impacts associated with the same, pursuant to the cited authorities and other applicable law, I hereby determine, order, and direct as follows:

A. The State of South Carolina must take additional proactive action and implement further extraordinary measures to prepare for and respond to the actual, ongoing, and evolving public health threat posed by COVID-19, minimize the resulting strain on healthcare providers, and otherwise respond to and mitigate the significant impacts associated with the same. In furtherance of the foregoing, and to further promote and facilitate the prompt implementation of effective "social distancing" practices, additional action is necessary to ensure the health, safety, security, and welfare of the people of the State of South Carolina.

B. Subject to any further clarification, guidance, rules, regulations, or restrictions issued, provided, or promulgated by the South Carolina Department of Commerce ("Department"), as authorized herein below, I hereby order and direct that effective Wednesday, April 1, 2020, at 5:00 p.m., the following "non-essential" businesses, venues, facilities, services, and activities shall be closed to non-employees and shall not be open for access or use by the public—to include members, if access or use is ordinarily restricted to or based on membership—or shall not take place, as applicable:

1. Entertainment venues and facilities as follows:
   (a) Night clubs
   (b) Bowling alleys
   (c) Arcades

(d) Concert venues
(e) Theaters, auditoriums, and performing arts centers
(f) Tourist attractions (including museums, aquariums, and planetariums)
(g) Racetracks
(h) Indoor children's play areas, with the exception of licensed childcare facilities
(i) Adult entertainment venues
(j) Bingo halls
(k) Venues operated by social clubs

2. Recreational and athletic facilities and activities as follows:
(a) Fitness and exercise centers and commercial gyms
(b) Spas and public or commercial swimming pools
(c) Group exercise facilities, to include yoga, barre, and spin studios or facilities
(d) Spectator sports
(e) Sports that involve interaction in close proximity to and within less than six (6) feet of another person
(f) Activities that require the use of shared sporting apparatus and equipment
(g) Activities on commercial or public playground equipment

3. Close-contact service providers as follows:
(a) Barber shops
(b) Hair salons
(c) Waxing salons
(d) Threading salons
(e) Nail salons and spas
(f) Body-art facilities and tattoo services
(g) Tanning salons
(h) Massage-therapy establishments and massage services

Section 2. Clarification and Provisional Determination Process

A. I hereby authorize and direct the South Carolina Department of Commerce ("Department"), in consultation with the Office of the Attorney General of South Carolina ("Attorney General"), to provide or issue any necessary and appropriate supplemental guidance, rules, regulations, or restrictions regarding the application of this Order and to provide clarification, as necessary and appropriate and in accordance with the process set forth below, regarding whether a specific business, venue, facility, service, or activity is required to close or is prohibited from taking place pursuant to this Order.

B. The Department shall review any requests for clarification or a determination regarding the applicability of this Order to a specific business, venue, facility, service, or activity and shall evaluate the same and make a determination regarding whether the business, venue, facility, service, or activity is "non-essential" based on whether it is deemed to be in the best interest of the State for such business, venue, facility, service, or activity to continue operations or proceed, in whole or in part, on a normal or modified basis. Should the Department have a question as to whether the business, venue, facility, service, or activity is "non-essential," the Department shall consult with the Attorney General as necessary and appropriate.

C. An individual or entity may submit requests for clarification or a determination regarding the applicability of this Order to a specific business, venue, facility, service, or activity to the Department using a form provided by the Department, which shall be available for public access and submission via the Department's website, at www.sccommerce.com. Individuals or entities may also submit questions or requests for clarification to the Department by email to covid19sc@sccommerce.com or by telephone at 803-734-2873.

D. A team from the Department will review each request for clarification and provide a response with the Department's determination within 24 hours of receipt. Pending the Department's determination with respect to a request for clarification, the business, venue, facility, service, or activity submitting such a request is authorized to continue operations, subject to any restrictions imposed by any prior or future Orders issued by the undersigned in connection with the State of Emergency, and with appropriate consideration of and adherence to guidance issued by state and federal public health and safety officials, to include the CDC and the Occupational Safety and Health Administration.

E. Any determination issued by the Department shall be deemed and considered provisional and shall be subject to revision, alteration, or revocation at any point, and in the sole discretion of the Department, based on and to account for, *inter alia*, the evolving nature and scope of the ongoing public health emergency associated with COVID-19.

F. Notwithstanding the foregoing, any and all businesses, venues, facilities, services, and activities in this State are urged to facilitate effective "social distancing" practices. As applicable and to the maximum extent possible, to further promote "social distancing," facilitate self-isolation, and otherwise prevent potential exposure to COVID-19, businesses and organizations are also encouraged to utilize telecommuting or work-from-home options for employees and to provide alternate means of purchasing and delivering products and services, to include online or telephone orders and curbside or off-site deliveries, and individuals are encouraged to utilize such options to support businesses in this State during the ongoing public health emergency.

Section 3. Enforcement

A. I hereby authorize any and all law enforcement officers of the State, or any political subdivision thereof, to do whatever may be deemed necessary to maintain peace and good order during the State of Emergency and to enforce the provisions of this Order and any prior or future Orders issued by the undersigned in connection with the present State of Emergency.

B. Pursuant to section 16-7-10(A) of the South Carolina Code of Laws, any individual who "refuse[s] to disperse upon order of a law enforcement officer," "wilfully fail[s] or refuse[s] to comply with any lawful order or direction of any law enforcement officer," or otherwise violates any provision of any Order issued by the undersigned in connection with the State of Emergency "is guilty of a misdemeanor and, upon conviction, must be fined not more than one hundred dollars or imprisoned for not more than thirty days."

C. In accordance with section 1-3-440(4) of the South Carolina Code of Laws, I further authorize, order, and direct any State, county, or city official to enforce the provisions of this Order and any prior or future Orders issued in connection with the present State of Emergency, as necessary and appropriate, in the courts of the State by injunction, mandamus, or other appropriate legal action.

D. In addition to the foregoing, I further authorize, order, and direct DHEC to exercise and utilize any and all necessary and appropriate emergency powers, as set forth in the Emergency Health Powers Act, codified as amended in Title 44, Chapter 4 of the South Carolina Code of Laws, to implement and enforce the provisions of this Order. In accordance with section 44-4-500 of the South Carolina Code of Laws, as amended, DHEC shall continue to "use every available means to prevent the transmission of infectious disease and to ensure that all cases of infectious disease are subject to proper control and treatment."

Section 4. General Provisions

A. This Order is not intended to create, and does not create, any individual right, privilege, or benefit, whether substantive or procedural, enforceable at law or in equity by any party against the State of South Carolina, its agencies, departments, political subdivisions, or other entities, or any officers, employees, or agents thereof, or any other person. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or

word of this Order is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this Order, as the undersigned would have issued this Order, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

B. If or to the extent that any political subdivision of this State seeks to adopt or enforce a local ordinance, rule, regulation, or other restriction that conflicts with this Order, this Order shall supersede and preempt any such local ordinance, rule, regulation, or other restriction.

C. This Order is effective immediately and shall remain in effect for the duration of the State of Emergency unless otherwise modified, amended, or rescinded by subsequent Order. Further proclamations, orders, and directives deemed necessary to ensure the fullest possible protection of life and property during this State of Emergency shall be issued orally by the undersigned and thereafter reduced to writing and published for dissemination within the succeeding 24-hour period.

GIVEN UNDER MY HAND AND THE GREAT SEAL OF THE STATE OF SOUTH CAROLINA, THIS 31st DAY OF MARCH, 2020.

HENRY MCMASTER
Governor

Executive Order No. 2020-18

WHEREAS, the State of South Carolina has taken, and must continue to take, all necessary and appropriate actions in confronting the unprecedented and evolving public health threat presented by the 2019 Novel Coronavirus ("COVID-19"), cases of which have now been identified and reported in each of the State's forty-six (46) counties; and

WHEREAS, to this end, the undersigned has, *inter alia*, convened the Public Health Emergency Plan Committee ("PHEPC"); activated the South Carolina Emergency Operations Plan ("Plan"); regularly conferred with state and federal agencies, officials, and experts, to include the South Carolina Department of Health and Environmental Control ("DHEC"), and the South Carolina Emergency Management Division ("EMD"); and requested that the General Assembly take action to make $45 million from the 2019–2020 Contingency Reserve Fund immediately available to DHEC in coordinating the State's public health response to COVID-19; and

WHEREAS, in addition to the foregoing, on March 11, 2020, the undersigned issued Executive Order No. 2020-07, suspending certain transportation-related rules and regulations, pursuant to 49 C.F.R. § 390.23 and section 56-5-70 of the South Carolina Code of Laws, as amended, for commercial vehicles and operators of commercial vehicles providing direct assistance to supplement state and local efforts and capabilities to protect public health and safety in connection with COVID-19; and

WHEREAS, on March 13, 2020, the undersigned issued Executive Order No. 2020-08, declaring a State of Emergency based on a determination that COVID-19 posed an imminent public health emergency for the State of South Carolina; and

WHEREAS, on March 13, 2020, the President of the United States declared the ongoing COVID-19 outbreak a pandemic of sufficient severity and magnitude to warrant an emergency declaration for all states, tribes, territories, and the District of Columbia, pursuant to Section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121–5207 ("Stafford Act"); and

WHEREAS, on March 13, 2020, the President of the United States also declared that the COVID-19 pandemic in the United States constitutes a national emergency, pursuant to Sections 201 and 301 of the National Emergencies Act, 50 U.S.C. §§ 1601 *et seq.*, and consistent with Section 1135 of the Social Security Act, as amended (42 U.S.C. § 1320b-5), retroactive to March 1, 2020; and

WHEREAS, on March 16, 2020, based on updated information and recommendations from the Centers for Disease Control and Prevention ("CDC"), the President of the United States and the White House Coronavirus Task Force issued new guidance—titled, "The President's Coronavirus Guidelines for America: 15 Days to Slow the Spread of Coronavirus (COVID-19)"—to help protect Americans during the global COVID-19 outbreak; and

WHEREAS, the President's Coronavirus Guidelines for America recommend, *inter alia*, that the American people "[w]ork or engage in schooling from home whenever possible"; "[a]void social gatherings in groups of more than 10 people"; "[a]void eating or drinking at bars, restaurants, and food courts—use drive-thru, pickup, or delivery options"; and "[a]void discretionary travel, shopping trips, and social visits"; and

WHEREAS, in proactively preparing for and promptly responding to the aforementioned emergency, the undersigned initiated and implemented various measures to address the significant public health, economic, and other impacts associated with COVID-19 and to mitigate the resulting burdens on healthcare providers, individuals, and businesses in the State of South Carolina; and

WHEREAS, on March 15, 2020, the undersigned issued Executive Order No. 2020-09, directing, *inter alia*, the closure of all public schools in the State of South Carolina for students and non-essential employees beginning Monday, March 16, 2020, and through Tuesday, March 31, 2020, and the postponement or rescheduling of any election scheduled to be held in this State on or before May 1, 2020, as well as urging that indoor and outdoor public gatherings be cancelled, postponed, or rescheduled, to the extent possible, or limited so as not to exceed one hundred (100) people; and

WHEREAS, on March 17, 2020, based on updated information and recommendations from the CDC, the President of the United States, and the White House Coronavirus Task Force, the undersigned issued Executive Order No. 2020-10, directing additional emergency measures in response to the threat posed by COVID-19, to include temporarily prohibiting restaurants from providing certain food services for on-premises consumption and prohibiting events at government facilities that would convene fifty (50) or more people in a single room, area, or other confined indoor or outdoor space; and

WHEREAS, in addition to the foregoing directives, Executive Order No. 2020-10 also "authorize[d] and direct[ed] any agency within the undersigned's Cabinet or any other department within the Executive Branch, as defined by section 1-30-10 of the South Carolina Code of Laws, as amended, through its respective director or secretary, to waive or 'suspend provisions of existing regulations prescribing procedures for conduct of state business if strict compliance with the provisions thereof would in any way prevent, hinder, or delay necessary action in coping with the emergency,' in accordance with section 25-1-440 of the South Carolina Code of Laws and other applicable law"; and

WHEREAS, on March 19, 2020, the undersigned issued Executive Order No. 2020-11, initiating further emergency measures and suspending certain regulations to ensure the proper function and continuity of state government operations and the uninterrupted performance and provision of emergency, essential, or otherwise mission-critical state government services, while simultaneously undertaking additional measures to safeguard the health and safety of state employees, mitigate significant economic impacts and burdens on affected individuals and employers, and provide regulatory relief to expedite emergency response initiatives and enhance the availability of critical healthcare services; and

WHEREAS, on March 21, 2020, the undersigned issued Executive Order No. 2020-12, initiating additional actions to provide regulatory relief to facilitate "social distancing" practices and to mitigate the significant economic impacts of COVID-19 on individuals and businesses throughout the State, particularly restaurants and other food-service establishments; and

WHEREAS, on March 23, 2020, the undersigned issued Executive Order No. 2020-13, authorizing and directing law enforcement officers of the State, or any political subdivision thereof, to, *inter alia*, prohibit or disperse any congregation or gathering of people, unless authorized or in their homes, in groups of three (3) or more people, if any such law enforcement official determines, in their discretion, that any such congregation or gathering of people poses, or could pose, a threat to public health; and

WHEREAS, on March 24, 2020, the undersigned requested that the President of the United States declare that a major disaster exists in the State of South Carolina pursuant to Section 401 of the Stafford Act; and

WHEREAS, on March 27, 2020, the President of the United States granted the undersigned's aforementioned request and declared that a major disaster exists in the State of South Carolina and ordered federal assistance to supplement state, tribal, and local recovery efforts in the areas affected by the COVID-19 pandemic, with an effective date retroactive to January 20, 2020, and continuing; and

WHEREAS, on March 27, 2020, the undersigned issued Executive Order No. 2020-14, directing that individuals who enter the State of South Carolina from an area with substantial community spread of COVID-19 shall be required to isolate or self-quarantine for a period of fourteen (14) days from the time of entry into the State of South Carolina or the duration of the individual's presence in South Carolina, whichever period is shorter; and

WHEREAS, on March 28, 2020, the undersigned issued Executive Order No. 2020-15, declaring a new, separate, and distinct State of Emergency based on a determination that COVID-19 posed an actual, ongoing, and evolving public health threat to the State of South Carolina; and

WHEREAS, on March 29, 2020, the President of the United States extended and expanded the provisions of his Coronavirus Guidelines for America until April 30, 2020, based on the ongoing nature and evolving scope of the global COVID-19 pandemic; and

WHEREAS, on March 30, 2020, the undersigned issued Executive Order No. 2020-16, directing that any and all public beach access points and public piers, docks, wharfs, boat ramps, and boat landings that provide public access to the public waters of this State shall be closed to public access for recreational purposes for the duration of the State of Emergency; and

WHEREAS, on March 31, 2020, the undersigned issued Executive Order No. 2020-17, directing that certain "non-essential" businesses, venues, facilities, services, and activities in the following categories be closed to non-employees and the public, effective Wednesday, April 1, 2020, at 5:00 p.m.: entertainment venues and facilities, recreational and athletic facilities and activities, and close-contact service providers; and

WHEREAS, in light of the continued spread of COVID-19 and the resulting strain on healthcare resources, after consulting with numerous state and federal agencies, officials, and experts, the undersigned has determined that it is necessary and prudent to take additional proactive action and implement further extraordinary measures to prepare for and respond to the actual, ongoing, and evolving public health threat posed by COVID-19; and

WHEREAS, section 1-3-430 of the South Carolina Code of Laws, as amended, provides that when a state of emergency has been declared, the undersigned "may further, cope with such threats and danger, order and direct any person or group of persons to do any act which would in his opinion prevent or minimize danger

to life, limb or property, or prevent a breach of the peace; and he may order any person or group of persons to refrain from doing any act or thing which would, in his opinion, endanger life, limb or property, or cause, or tend to cause, a breach of the peace, or endanger the peace and good order of the State or any section or community thereof, and he shall have full power by use of all appropriate available means to enforce such order or proclamation"; and

WHEREAS, pursuant to section 1-3-460 of the South Carolina Code of Laws, as amended, the foregoing and other emergency authority is "supplemental to and in aid of powers now vested in the Governor under the Constitution, statutory laws[,] and police powers of the State"; and

WHEREAS, in accordance with section 25-1-440 of the South Carolina Code of Laws, as amended, when an emergency has been declared, the undersigned is "responsible for the safety, security, and welfare of the State and is empowered with [certain] additional authority to adequately discharge this responsibility," to include issuing, amending, and rescinding "emergency proclamations and regulations," which shall "have the force and effect of law as long as the emergency exists"; and

WHEREAS, in addition to the foregoing, section 25-1-440 of the South Carolina Code of Laws, authorizes the undersigned, during a declared emergency, to "transfer the direction, personnel, or functions of state departments, agencies, and commissions, or units thereof, for purposes of facilitating or performing emergency services as necessary or desirable," and to "compel performance by elected and appointed state, county, and municipal officials and employees of the emergency duties and functions assigned them in the State Emergency Plan or by Executive Order"; and

WHEREAS, the undersigned is further authorized, pursuant to section 25-1-440 of the South Carolina Code of Laws, to "direct and compel evacuation of all or part of the populace from any stricken or threatened area if this action is considered necessary for the preservation of life or other emergency mitigation, response, or recovery; to prescribe routes, modes of transportation, and destination in connection with evacuation; and to control ingress and egress at an emergency area, the movement of persons within the area, and the occupancy of premises therein"; and

WHEREAS, pursuant to section 25-1-440 of the South Carolina Code of Laws, the undersigned may authorize a party to exceed the terms of any curfew imposed if "the party is a business that sells emergency commodities, an employee of a business that sells emergency commodities, or a local official," and "exceeding the terms of the curfew is necessary to ensure emergency commodities are available to the public"; and

WHEREAS, in accordance with section 16-7-10(A) of the South Carolina Code of Laws, as amended, "[i]n any area designated by the Governor in his proclamation that a state of emergency exists, and during the duration of the proclamation, it is unlawful for a person to: violate a provision in the proclamation including, but not limited to, any curfew set forth by the proclamation; congregate, unless authorized or in their homes, in groups of three or more and to refuse to disperse upon order of a law enforcement officer; or wilfully fail or refuse to comply with any lawful order or direction of any law enforcement officer"; and

WHEREAS, it is axiomatic that "[t]he health, welfare, and safety of the lives and property of the people are beyond question matters of public concern, and reasonable regulations and laws designed to preserve and protect the same are clearly contained in the police power inherent in the sovereign," 1980 S.C. Op. Att'y Gen. 142 (Sept. 5, 1980); and

WHEREAS, for the aforementioned and other reasons, and in recognition and furtherance of the undersigned's authority and responsibility to provide for and ensure the health, safety, security, and welfare of the people of the State of South Carolina, the undersigned has determined that the State of South Carolina must take additional proactive action and implement further extraordinary measures designed to slow the spread of COVID-19 and limit the resulting strain on healthcare resources, to include closing or restricting public access to certain "non-essential" businesses, venues, facilities, services, and activities in the State.

NOW, THEREFORE, by virtue of the authority vested in me as Governor of the State of South Carolina and pursuant to the Constitution and Laws of this State and the powers conferred upon me therein, I hereby order and direct as follows:

Section 1. Closure of Non-Essential Businesses, Venues, Facilities, Services, and Activities for Public Use

To prepare for and respond to the actual, ongoing, and evolving public health threat posed by COVID-19 and to mitigate the significant impacts associated with the same, pursuant to the cited authorities and other applicable law, I hereby determine, order, and direct as follows:

A. The State of South Carolina must take additional proactive action and implement further extraordinary measures to prepare for and respond to the actual, ongoing, and evolving public health threat posed by COVID-19, minimize the resulting strain on healthcare providers, and otherwise respond to and mitigate the significant impacts associated with the same. In furtherance of the foregoing, and to further promote and facilitate the prompt implementation of effective "social distancing" practices, additional action is necessary to ensure the health, safety, security, and welfare of the people of the State of South Carolina.

B. Subject to any clarification, guidance, rules, regulations, or restrictions issued, provided, or promulgated by the South Carolina Department of Commerce ("Department"), as authorized herein below, I hereby order and direct that the following "non-essential" businesses, venues, facilities, services, and activities shall remain closed to non-employees and shall not be open for access or use by the public—to include members, if access or use is ordinarily restricted to or based on membership—or shall not take place, as applicable, as previously ordered and directed in accordance with Section 1 of Executive Order No. 2020-17:

1. Entertainment venues and facilities as follows:
   (a) Night clubs
   (b) Bowling alleys
   (c) Arcades
   (d) Concert venues
   (e) Theaters, auditoriums, and performing arts centers
   (f) Tourist attractions (including museums, aquariums, and planetariums)
   (g) Racetracks
   (h) Indoor children's play areas, with the exception of licensed childcare facilities
   (i) Adult entertainment venues
   (j) Bingo halls
   (k) Venues operated by social clubs

2. Recreational and athletic facilities and activities as follows:
   (a) Fitness and exercise centers and commercial gyms
   (b) Spas and public or commercial swimming pools
   (c) Group exercise facilities, to include yoga, barre, and spin studios or facilities
   (d) Spectator sports
   (e) Sports that involve interaction in close proximity to and within less than six (6) feet of another person
   (f) Activities that require the use of shared sporting apparatus and equipment
   (g) Activities on commercial or public playground equipment

3. Close-contact service providers as follows:
   (a) Barber shops
   (b) Hair salons
   (c) Waxing salons

(d) Threading salons
(e) Nail salons and spas
(f) Body-art facilities and tattoo services
(g) Tanning salons
(h) Massage-therapy establishments and massage services

C. Subject to any clarification, guidance, rules, regulations, or restrictions issued, provided, or promulgated by the Department, I hereby order and direct that effective Monday, April 6, 2020, at 5:00 p.m., the following additional "non-essential" businesses, venues, facilities, services, and activities shall be closed to non-employees and shall not be open for access or use by the public—to include members, if access or use is ordinarily restricted to or based on membership—or shall not take place, as applicable:

1. Retail stores as follows:
   (a) Furniture and home-furnishings stores
   (b) Clothing, shoe, and clothing-accessory stores
   (c) Jewelry, luggage, and leather goods stores
   (d) Department stores, with the exception of hardware and home-improvement stores
   (e) Sporting goods stores
   (f) Book, craft, and music stores
   (g) Flea markets
   (h) Florists and flower stores

D. This Section does not prohibit the continued operation of retail stores, as set forth above, for the limited purpose of fulfilling online or telephone orders or providing alternate means of purchasing or delivering products or services—to include curbside purchase, pickup, or delivery and home or off-site delivery—provided that such options or measures can be implemented in a manner that facilitates and maintains effective "social distancing" and is consistent with any applicable guidance issued by state and federal public health and safety officials.

E. This Section shall not be interpreted, applied, implemented, or construed in a manner so as to suspend, restrict, or otherwise limit the sale or transportation of firearms or ammunition or any component thereof.

Section 2. Clarification and Provisional Determination Process

A. I hereby authorize and direct the Department, in consultation with the Office of the Attorney General of South Carolina ("Attorney General"), to provide or issue any necessary and appropriate supplemental guidance, rules, regulations, or restrictions regarding the application of this Order and to provide clarification, as necessary and appropriate and in accordance with the process set forth below, regarding whether a specific business, venue, facility, service, or activity is required to close or is prohibited from taking place pursuant to this Order.

B. The Department shall review any requests for clarification or a determination regarding the applicability of this Order to a specific business, venue, facility, service, or activity and shall evaluate the same and make a determination regarding whether the business, venue, facility, service, or activity is "non-essential" based on whether it is deemed to be in the best interest of the State for such business, venue, facility, service, or activity to continue operations or proceed, in whole or in part, on a normal or modified basis. Should the Department have a question as to whether the business, venue, facility, service, or activity is "non-essential," the Department shall consult with the Attorney General as necessary and appropriate.

C. An individual or entity may submit requests for clarification or a determination regarding the applicability of this Order to a specific business, venue, facility, service, or activity to the Department using a

form provided by the Department, which shall be available for public access and submission via the Department's website, at www.sccommerce.com. Individuals or entities may also submit questions or requests for clarification to the Department by email to covid19sc@sccommerce.com or by telephone at 803-734-2873.

D. A team from the Department will review each request for clarification and provide a response with the Department's determination within 24 hours of receipt. Pending the Department's determination with respect to a request for clarification, the business, venue, facility, service, or activity submitting such a request is authorized to continue operations, subject to any restrictions imposed by any prior or future Orders issued by the undersigned in connection with the State of Emergency, and with appropriate consideration of and adherence to guidance issued by state and federal public health and safety officials, to include the CDC and the Occupational Safety and Health Administration.

E. Any determination issued by the Department shall be deemed and considered provisional and shall be subject to revision, alteration, or revocation at any point, and in the sole discretion of the Department, based on and to account for, *inter alia*, the evolving nature and scope of the ongoing public health emergency associated with COVID-19.

F. Notwithstanding the foregoing, any and all businesses, venues, facilities, services, and activities in this State are urged to facilitate effective "social distancing" practices. As applicable and to the maximum extent possible, to further promote "social distancing," facilitate self-isolation, and otherwise prevent potential exposure to COVID-19, businesses and organizations are also encouraged to utilize telecommuting or work-from-home options for employees and to provide alternate means of purchasing and delivering products and services, to include online or telephone orders and curbside or off-site deliveries, and individuals are encouraged to utilize such options to support businesses in this State during the ongoing public health emergency.

Section 3. Enforcement

A. I hereby authorize any and all law enforcement officers of the State, or any political subdivision thereof, to do whatever may be deemed necessary to maintain peace and good order during the State of Emergency and to enforce the provisions of this Order and any prior or future Orders issued by the undersigned in connection with the present State of Emergency.

B. Pursuant to section 16-7-10(A) of the South Carolina Code of Laws, any individual who "refuse[s] to disperse upon order of a law enforcement officer," "wilfully fail[s] or refuse[s] to comply with any lawful order or direction of any law enforcement officer," or otherwise violates any provision of any Order issued by the undersigned in connection with the State of Emergency "is guilty of a misdemeanor and, upon conviction, must be fined not more than one hundred dollars or imprisoned for not more than thirty days."

C. In accordance with section 1-3-440(4) of the South Carolina Code of Laws, I further authorize, order, and direct any State, county, or city official to enforce the provisions of this Order and any prior or future Orders issued in connection with the present State of Emergency, as necessary and appropriate, in the courts of the State by injunction, mandamus, or other appropriate legal action.

D. In addition to the foregoing, I further authorize, order, and direct DHEC to exercise and utilize any and all necessary and appropriate emergency powers, as set forth in the Emergency Health Powers Act, codified as amended in Title 44, Chapter 4 of the South Carolina Code of Laws, to implement and enforce the provisions of this Order. In accordance with section 44-4-500 of the South Carolina Code of Laws, as amended, DHEC shall continue to "use every available means to prevent the transmission of infectious disease and to ensure that all cases of infectious disease are subject to proper control and treatment."

Section 4. General Provisions

A. This Order supersedes, rescinds, and replaces the provisions of Executive Order No. 2020-17.

B. This Order is not intended to create, and does not create, any individual right, privilege, or benefit, whether substantive or procedural, enforceable at law or in equity by any party against the State of South Carolina, its agencies, departments, political subdivisions, or other entities, or any officers, employees, or agents thereof, or any other person. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this Order is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this Order, as the undersigned would have issued this Order, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

C. If or to the extent that any political subdivision of this State seeks to adopt or enforce a local ordinance, rule, regulation, or other restriction that conflicts with this Order, this Order shall supersede and preempt any such local ordinance, rule, regulation, or other restriction.

D. This Order is effective immediately and shall remain in effect for the duration of the State of Emergency unless otherwise modified, amended, or rescinded by subsequent Order. Further proclamations, orders, and directives deemed necessary to ensure the fullest possible protection of life and property during this State of Emergency shall be issued orally by the undersigned and thereafter reduced to writing and published for dissemination within the succeeding 24-hour period.

GIVEN UNDER MY HAND AND THE GREAT SEAL OF THE STATE OF SOUTH CAROLINA, THIS 3rd DAY OF APRIL, 2020.

HENRY MCMASTER
Governor

Executive Order No. 2020-19

WHEREAS, the State of South Carolina has taken, and must continue to take, all necessary and appropriate actions in confronting the unprecedented and evolving public health threat presented by the 2019 Novel Coronavirus ("COVID-19"), cases of which have now been identified and reported in each of the State's forty-six (46) counties; and

WHEREAS, to this end, the undersigned has, *inter alia*, convened the Public Health Emergency Plan Committee ("PHEPC"); activated the South Carolina Emergency Operations Plan ("Plan"); regularly conferred with state and federal agencies, officials, and experts, to include the South Carolina Department of Health and Environmental Control ("DHEC"), and the South Carolina Emergency Management Division ("EMD"); and requested that the General Assembly take action to make $45 million from the 2019–2020 Contingency Reserve Fund immediately available to DHEC in coordinating the State's public health response to COVID-19; and

WHEREAS, in addition to the foregoing, on March 11, 2020, the undersigned issued Executive Order No. 2020-07, suspending certain transportation-related rules and regulations, pursuant to 49 C.F.R. § 390.23 and section 56-5-70 of the South Carolina Code of Laws, as amended, for commercial vehicles and operators of commercial vehicles providing direct assistance to supplement state and local efforts and capabilities to protect public health and safety in connection with COVID-19; and

WHEREAS, on March 13, 2020, the undersigned issued Executive Order No. 2020-08, declaring a State of Emergency based on a determination that COVID-19 posed an imminent public health emergency for the State of South Carolina; and

WHEREAS, on March 13, 2020, the President of the United States declared the ongoing COVID-19 outbreak a pandemic of sufficient severity and magnitude to warrant an emergency declaration for all states, tribes, territories, and the District of Columbia, pursuant to Section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121–5207 ("Stafford Act"); and

WHEREAS, on March 13, 2020, the President of the United States also declared that the COVID-19 pandemic in the United States constitutes a national emergency, pursuant to Sections 201 and 301 of the National Emergencies Act, 50 U.S.C. §§ 1601 *et seq.*, and consistent with Section 1135 of the Social Security Act, as amended (42 U.S.C. § 1320b-5), retroactive to March 1, 2020; and

WHEREAS, on March 16, 2020, based on updated information and recommendations from the Centers for Disease Control and Prevention ("CDC"), the President of the United States and the White House Coronavirus Task Force issued new guidance—titled, "The President's Coronavirus Guidelines for America: 15 Days to Slow the Spread of Coronavirus (COVID-19)"—to help protect Americans during the global COVID-19 outbreak; and

WHEREAS, the President's Coronavirus Guidelines for America recommend, *inter alia*, that the American people "[w]ork or engage in schooling from home whenever possible"; "[a]void social gatherings in groups of more than 10 people"; "[a]void eating or drinking at bars, restaurants, and food courts—use drive-thru, pickup, or delivery options"; and "[a]void discretionary travel, shopping trips, and social visits"; and

WHEREAS, in proactively preparing for and promptly responding to the aforementioned emergency, the undersigned initiated and implemented various measures to address the significant public health, economic, and other impacts associated with COVID-19 and to mitigate the resulting burdens on healthcare providers, individuals, and businesses in the State of South Carolina; and

WHEREAS, on March 15, 2020, the undersigned issued Executive Order No. 2020-09, directing, *inter alia*, the closure of all public schools in the State of South Carolina for students and non-essential employees beginning Monday, March 16, 2020, and through Tuesday, March 31, 2020, and the postponement or rescheduling of any election scheduled to be held in this State on or before May 1, 2020, as well as urging that indoor and outdoor public gatherings be cancelled, postponed, or rescheduled, to the extent possible, or limited so as not to exceed one hundred (100) people; and

WHEREAS, on March 17, 2020, based on updated information and recommendations from the CDC, the President of the United States, and the White House Coronavirus Task Force, the undersigned issued Executive Order No. 2020-10, directing additional emergency measures in response to the threat posed by COVID-19, to include temporarily prohibiting restaurants from providing certain food services for on-premises consumption and prohibiting events at government facilities that would convene fifty (50) or more people in a single room, area, or other confined indoor or outdoor space; and

WHEREAS, in addition to the foregoing directives, Executive Order No. 2020-10 also "authorize[d] and direct[ed] any agency within the undersigned's Cabinet or any other department within the Executive Branch, as defined by section 1-30-10 of the South Carolina Code of Laws, as amended, through its respective director or secretary, to waive or 'suspend provisions of existing regulations prescribing procedures for conduct of state business if strict compliance with the provisions thereof would in any way prevent, hinder, or delay necessary action in coping with the emergency,' in accordance with section 25-1-440 of the South Carolina Code of Laws and other applicable law"; and

WHEREAS, on March 19, 2020, the undersigned issued Executive Order No. 2020-11, initiating further emergency measures and suspending certain regulations to ensure the proper function and continuity of state government operations and the uninterrupted performance and provision of emergency, essential, or otherwise mission-critical state government services, while simultaneously undertaking additional measures to safeguard the health and safety of state employees, mitigate significant economic impacts and burdens on affected individuals and employers, and provide regulatory relief to expedite emergency response initiatives and enhance the availability of critical healthcare services; and

WHEREAS, on March 21, 2020, the undersigned issued Executive Order No. 2020-12, initiating additional actions to provide regulatory relief to facilitate "social distancing" practices and to mitigate the significant economic impacts of COVID-19 on individuals and businesses throughout the State, particularly restaurants and other food-service establishments; and

WHEREAS, on March 23, 2020, the undersigned issued Executive Order No. 2020-13, authorizing and directing law enforcement officers of the State, or any political subdivision thereof, to, *inter alia*, prohibit or disperse any congregation or gathering of people, unless authorized or in their homes, in groups of three (3) or more people, if any such law enforcement official determines, in their discretion, that any such congregation or gathering of people poses, or could pose, a threat to public health; and

WHEREAS, on March 24, 2020, the undersigned requested that the President of the United States declare that a major disaster exists in the State of South Carolina pursuant to Section 401 of the Stafford Act; and

WHEREAS, on March 27, 2020, the President of the United States granted the undersigned's aforementioned request and declared that a major disaster exists in the State of South Carolina and ordered federal assistance to supplement state, tribal, and local recovery efforts in the areas affected by the COVID-19 pandemic, with an effective date retroactive to January 20, 2020, and continuing; and

WHEREAS, on March 27, 2020, the undersigned issued Executive Order No. 2020-14, directing that individuals who enter the State of South Carolina from an area with substantial community spread of COVID-19 shall be required to isolate or self-quarantine for a period of fourteen (14) days from the time of entry into the State of South Carolina or the duration of the individual's presence in South Carolina, whichever period is shorter; and

WHEREAS, on March 28, 2020, the undersigned issued Executive Order No. 2020-15, declaring a new, separate, and distinct State of Emergency based on a determination that COVID-19 posed an actual, ongoing, and evolving public health threat to the State of South Carolina; and

WHEREAS, on March 29, 2020, the President of the United States extended and expanded the provisions of his Coronavirus Guidelines for America until April 30, 2020, based on the ongoing nature and evolving scope of the global COVID-19 pandemic; and

WHEREAS, on March 30, 2020, the undersigned issued Executive Order No. 2020-16, directing that any and all public beach access points and public piers, docks, wharfs, boat ramps, and boat landings that provide public access to the public waters of this State shall be closed to public access for recreational purposes for the duration of the State of Emergency; and

WHEREAS, on March 31, 2020, the undersigned issued Executive Order No. 2020-17, directing that certain "non-essential" businesses, venues, facilities, services, and activities in the following categories be closed to non-employees and the public, effective Wednesday, April 1, 2020, at 5:00 p.m.: entertainment venues and facilities, recreational and athletic facilities and activities, and close-contact service providers; and

WHEREAS, on April 3, 2020, the undersigned issued Executive Order No. 2020-18, directing that certain additional "non-essential" businesses, venues, facilities, services, and activities in the general category of retail stores be closed to non-employees and the public, effective Monday, April 6, 2020, at 5:00 p.m.; and

WHEREAS, in light of the continued spread of COVID-19 and the resulting strain on healthcare resources, after consulting with numerous state and federal agencies, officials, and experts, the undersigned has determined that it is necessary and prudent to take additional proactive action and implement further extraordinary measures to prepare for and respond to the actual, ongoing, and evolving public health threat posed by COVID-19; and

WHEREAS, section 1-3-430 of the South Carolina Code of Laws, as amended, provides that when a state of emergency has been declared, the undersigned "may further, cope with such threats and danger, order and direct any person or group of persons to do any act which would in his opinion prevent or minimize danger to life, limb or property, or prevent a breach of the peace; and he may order any person or group of persons to refrain from doing any act or thing which would, in his opinion, endanger life, limb or property, or cause, or tend to cause, a breach of the peace, or endanger the peace and good order of the State or any section or community thereof, and he shall have full power by use of all appropriate available means to enforce such order or proclamation"; and

WHEREAS, pursuant to section 1-3-460 of the South Carolina Code of Laws, as amended, the foregoing and other emergency authority is "supplemental to and in aid of powers now vested in the Governor under the Constitution, statutory laws[,] and police powers of the State"; and

WHEREAS, in accordance with section 25-1-440 of the South Carolina Code of Laws, as amended, when an emergency has been declared, the undersigned is "responsible for the safety, security, and welfare of the State and is empowered with [certain] additional authority to adequately discharge this responsibility," to include issuing, amending, and rescinding "emergency proclamations and regulations," which shall "have the force and effect of law as long as the emergency exists"; and

WHEREAS, in addition to the foregoing, section 25-1-440 of the South Carolina Code of Laws, authorizes the undersigned, during a declared emergency, to "transfer the direction, personnel, or functions of state departments, agencies, and commissions, or units thereof, for purposes of facilitating or performing emergency services as necessary or desirable," and to "compel performance by elected and appointed state, county, and municipal officials and employees of the emergency duties and functions assigned them in the State Emergency Plan or by Executive Order"; and

WHEREAS, the undersigned is further authorized, pursuant to section 25-1-440 of the South Carolina Code of Laws, to "direct and compel evacuation of all or part of the populace from any stricken or threatened area if this action is considered necessary for the preservation of life or other emergency mitigation, response, or recovery; to prescribe routes, modes of transportation, and destination in connection with evacuation; and to control ingress and egress at an emergency area, the movement of persons within the area, and the occupancy of premises therein"; and

WHEREAS, pursuant to section 25-1-440 of the South Carolina Code of Laws, the undersigned may authorize a party to exceed the terms of any curfew imposed if "the party is a business that sells emergency commodities, an employee of a business that sells emergency commodities, or a local official," and "exceeding the terms of the curfew is necessary to ensure emergency commodities are available to the public"; and

WHEREAS, in accordance with section 16-7-10(A) of the South Carolina Code of Laws, as amended, "[i]n any area designated by the Governor in his proclamation that a state of emergency exists, and during the duration of the proclamation, it is unlawful for a person to: violate a provision in the proclamation including, but not limited to, any curfew set forth by the proclamation; congregate, unless authorized or in their homes, in

groups of three or more and to refuse to disperse upon order of a law enforcement officer; or wilfully fail or refuse to comply with any lawful order or direction of any law enforcement officer"; and

WHEREAS, it is axiomatic that "[t]he health, welfare, and safety of the lives and property of the people are beyond question matters of public concern, and reasonable regulations and laws designed to preserve and protect the same are clearly contained in the police power inherent in the sovereign," 1980 S.C. Op. Att'y Gen. 142 (Sept. 5, 1980); and

WHEREAS, for the aforementioned and other reasons, and in recognition and furtherance of the undersigned's authority and responsibility to provide for and ensure the health, safety, security, and welfare of the people of the State of South Carolina, the undersigned has determined that the State of South Carolina must take additional proactive action and implement further extraordinary measures designed to slow the spread of COVID-19 and limit the resulting strain on healthcare resources.

NOW, THEREFORE, by virtue of the authority vested in me as Governor of the State of South Carolina and pursuant to the Constitution and Laws of this State and the powers conferred upon me therein, I hereby order and direct as follows:

Section 1. Lodging and Travel Restrictions for Individuals Entering South Carolina from High-Risk Areas

To prepare for and respond to the ongoing and potential impacts associated with COVID-19, and the evolving public health threat posed by the same, and to maintain peace and good order during the State of Emergency, pursuant to the cited authorities and other applicable law, I hereby determine, order, and direct as follows:

A. The State of South Carolina must take additional proactive action and implement further extraordinary measures to prepare for and respond to the actual, ongoing, and evolving public health threat posed by COVID-19, minimize the resulting strain on healthcare providers, and otherwise respond to and mitigate the significant impacts associated with the same. In furtherance of the foregoing, and to avoid or minimize the potential risks associated with individuals entering this State from areas with extensive community transmission of COVID-19, additional action is necessary to ensure the health, safety, security, and welfare of the people of the State of South Carolina.

B. I hereby order and direct that effective Friday, April 3, 2020, at 5:00 p.m., any and all individuals, entities, or establishments engaged in the provision of short-term rentals, vacation rentals, or other lodging accommodations or operations in exchange for consideration (collectively "Lodging"), as set forth below, in the State of South Carolina are prohibited from making or accepting new reservations or bookings from or for individuals residing in or travelling from any country, state, municipality, or other geographic area subject to or identified in a CDC travel advisory or other CDC notice as a location with extensive community transmission of COVID-19, to include the Tri-State Area (consisting of the States of New York, New Jersey, and Connecticut).

C. For purposes of this Section, Lodging shall include the following:

1. A "lodging establishment," as defined by section 45-2-20(2) of the South Carolina Code of Laws, as amended, to mean "a hotel, motel, villa, condominium, inn, tourist court, tourist camp, campground, bed and breakfast, residence, or any place in which rooms, lodging, or sleeping accommodations are furnished to transients for a consideration."

2. A vacation rental property or other short-term rental property that involves the rental of any house, condominium, room, or other dwelling unit for a period

of less than ninety (90) days if such property is advertised, represented, or held out to the public as a place regularly rented to, or available for rental to, guests or if such property has been so advertised, represented, or held out to the public at any point during the preceding thirty (30) days.

D. This Section does not prohibit any individual, entity, or establishment from providing Lodging to the following:

1. Individuals operating commercial vehicles transporting essential goods and products, such as food, water, medicine, medical supplies and equipment, fuels and petroleum products (to include fuel oil, diesel oil, gasoline, kerosene, propane, and liquid petroleum), livestock, poultry, feed for livestock and poultry, and crops and other agricultural products ready to be harvested (to include timber and wood chips); individuals employed by airlines; and individuals otherwise engaged in commercial transportation activities.

2. Individuals performing or assisting with military, healthcare, public safety, or emergency response operations, as well as any other operations or services identified by the United States Cybersecurity and Infrastructure Security Agency in its March 28, 2020 Memorandum, or any future amendments or supplements thereto, as essential to continued critical infrastructure viability.

E. I hereby modify and amend Section 1 of Executive Order No. 2020-14 to clarify that the provisions thereof shall not apply to individuals performing or assisting with those operations, services, or activities identified in Section 1(D)(1), (2) of this Order.

Section 2. Enforcement

A. I hereby authorize any and all law enforcement officers of the State, or any political subdivision thereof, to do whatever may be deemed necessary to maintain peace and good order during the State of Emergency and to enforce the provisions of this Order and any prior or future Orders issued by the undersigned in connection with the present State of Emergency.

B. Pursuant to section 16-7-10(A) of the South Carolina Code of Laws, any individual who "refuse[s] to disperse upon order of a law enforcement officer," "wilfully fail[s] or refuse[s] to comply with any lawful order or direction of any law enforcement officer," or otherwise violates any provision of any Order issued by the undersigned in connection with the State of Emergency "is guilty of a misdemeanor and, upon conviction, must be fined not more than one hundred dollars or imprisoned for not more than thirty days."

C. In accordance with section 1-3-440(4) of the South Carolina Code of Laws, I further authorize, order, and direct any State, county, or city official to enforce the provisions of this Order and any prior or future Orders issued in connection with the present State of Emergency, as necessary and appropriate, in the courts of the State by injunction, mandamus, or other appropriate legal action.

D. In addition to the foregoing, I further authorize, order, and direct DHEC to exercise and utilize any and all necessary and appropriate emergency powers, as set forth in the Emergency Health Powers Act, codified as amended in Title 44, Chapter 4 of the South Carolina Code of Laws, to implement and enforce the provisions of this Order. In accordance with section 44-4-500 of the South Carolina Code of Laws, as amended, DHEC shall continue to "use every available means to prevent the transmission of infectious disease and to ensure that all cases of infectious disease are subject to proper control and treatment."

Section 3. General Provisions

A. This Order is not intended to create, and does not create, any individual right, privilege, or benefit, whether substantive or procedural, enforceable at law or in equity by any party against the State of South Carolina, its agencies, departments, political subdivisions, or other entities, or any officers, employees, or agents thereof, or any other person. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this Order is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this Order, as the undersigned would have issued this Order, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

B. If or to the extent that any political subdivision of this State seeks to adopt or enforce a local ordinance, rule, regulation, or other restriction that conflicts with this Order, this Order shall supersede and preempt any such local ordinance, rule, regulation, or other restriction.

C. This Order is effective immediately and shall remain in effect for the duration of the State of Emergency unless otherwise modified, amended, or rescinded by subsequent Order. Further proclamations, orders, and directives deemed necessary to ensure the fullest possible protection of life and property during this State of Emergency shall be issued orally by the undersigned and thereafter reduced to writing and published for dissemination within the succeeding 24-hour period.

GIVEN UNDER MY HAND AND THE GREAT SEAL OF THE STATE OF SOUTH CAROLINA, THIS 3rd DAY OF APRIL, 2020.

HENRY MCMASTER
Governor

Executive Order No. 2020-20

WHEREAS, a severe winter storm impacted portions of the State of South Carolina beginning on February 20, 2020, which produced a mixture of rain, freezing rain, and snow, and created significant accumulations of ice and snow and other dangerous conditions in certain areas of the State through February 21, 2020; and

WHEREAS, due to the aforementioned hazardous weather conditions and resulting impacts, and in accordance with county government closures and the normal state procedure associated with the same, state government offices in numerous counties throughout the State were closed or operated on an abbreviated schedule to ensure the safety of state employees and the general public; and

WHEREAS, section 8-11-57 of the South Carolina Code of Laws, as amended, provides, in pertinent part, that "whenever the Governor declares a state of emergency or orders all or some state offices closed due to hazardous weather conditions he may authorize up to five days leave with pay for affected state employees who are absent from work due to the state of emergency or the hazardous weather conditions."

NOW, THEREFORE, by virtue of the authority vested in me as Governor of the State of South Carolina and pursuant to the Constitution and Laws of this State and the powers conferred upon me therein, I hereby order and direct as follows:

Section 1. I hereby authorize leave with pay for affected state employees, as set forth below, who were absent from work due to the aforementioned hazardous weather conditions, and in accordance with the

directive for state government offices to follow county government closures for hazardous weather conditions, in the following counties and on the following dates:

February 21, 2020:

Abbreviated Schedule: Anderson County (delayed by two (2) hours), Dillon County (delayed by two (2) hours), Florence County (delayed by one (1) hour), Laurens County (delayed by two (2) hours), Marion County (delayed by two (2) hours), Oconee County (opened at 10:30 a.m.), Pickens County (opened at 11:00 a.m.), Union County (delayed by two (2) hours), Williamsburg County (delayed by two (2) hours)

Section 2. In the event that county government offices in a county not listed above were closed or operated on an abbreviated schedule due to the aforementioned hazardous weather conditions, I hereby authorize the South Carolina Department of Administration to grant leave with pay for affected state employees who were absent from work as a result of the corresponding closure of state government offices and to administratively add any such county to the list of covered closures.

This Order is effective immediately.

GIVEN UNDER MY HAND AND THE GREAT SEAL OF THE STATE OF SOUTH CAROLINA, THIS 6th DAY OF APRIL, 2020.

HENRY MCMASTER
Governor

Executive Order No. 2020-21

WHEREAS, the State of South Carolina has taken, and must continue to take, all necessary and appropriate actions in confronting the unprecedented and evolving public health threat presented by the 2019 Novel Coronavirus ("COVID-19"), cases of which have now been identified and reported in each of the State's forty-six (46) counties; and

WHEREAS, to this end, the undersigned has, *inter alia*, convened the Public Health Emergency Plan Committee ("PHEPC"); activated the South Carolina Emergency Operations Plan ("Plan"); regularly conferred with state and federal agencies, officials, and experts, to include the South Carolina Department of Health and Environmental Control ("DHEC"), and the South Carolina Emergency Management Division ("EMD"); and requested that the General Assembly take action to make $45 million from the 2019–2020 Contingency Reserve Fund immediately available to DHEC in coordinating the State's public health response to COVID-19; and

WHEREAS, in addition to the foregoing, on March 11, 2020, the undersigned issued Executive Order No. 2020-07, suspending certain transportation-related rules and regulations, pursuant to 49 C.F.R. § 390.23 and section 56-5-70 of the South Carolina Code of Laws, as amended, for commercial vehicles and operators of commercial vehicles providing direct assistance to supplement state and local efforts and capabilities to protect public health and safety in connection with COVID-19; and

WHEREAS, on March 13, 2020, the undersigned issued Executive Order No. 2020-08, declaring a State of Emergency based on a determination that COVID-19 posed an imminent public health emergency for the State of South Carolina; and

WHEREAS, on March 13, 2020, the President of the United States declared the ongoing COVID-19 outbreak a pandemic of sufficient severity and magnitude to warrant an emergency declaration for all states,

tribes, territories, and the District of Columbia, pursuant to Section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121–5207 ("Stafford Act"); and

WHEREAS, on March 13, 2020, the President of the United States also declared that the COVID-19 pandemic in the United States constitutes a national emergency, pursuant to Sections 201 and 301 of the National Emergencies Act, 50 U.S.C. §§ 1601 *et seq.*, and consistent with Section 1135 of the Social Security Act, as amended (42 U.S.C. § 1320b-5), retroactive to March 1, 2020; and

WHEREAS, on March 16, 2020, based on updated information and recommendations from the Centers for Disease Control and Prevention ("CDC"), the President of the United States and the White House Coronavirus Task Force issued new guidance—titled, "The President's Coronavirus Guidelines for America: 15 Days to Slow the Spread of Coronavirus (COVID-19)"—to help protect Americans during the global COVID-19 outbreak; and

WHEREAS, the President's Coronavirus Guidelines for America recommend, *inter alia*, that the American people "[w]ork or engage in schooling from home whenever possible"; "[a]void social gatherings in groups of more than 10 people"; "[a]void eating or drinking at bars, restaurants, and food courts—use drive-thru, pickup, or delivery options"; and "[a]void discretionary travel, shopping trips, and social visits"; and

WHEREAS, in proactively preparing for and promptly responding to the aforementioned emergency, the undersigned initiated and implemented various measures to address the significant public health, economic, and other impacts associated with COVID-19 and to mitigate the resulting burdens on healthcare providers, individuals, and businesses in the State of South Carolina; and

WHEREAS, on March 15, 2020, the undersigned issued Executive Order No. 2020-09, directing, *inter alia*, the closure of all public schools in the State of South Carolina for students and non-essential employees beginning Monday, March 16, 2020, and through Tuesday, March 31, 2020, and the postponement or rescheduling of any election scheduled to be held in this State on or before May 1, 2020, as well as urging that indoor and outdoor public gatherings be cancelled, postponed, or rescheduled, to the extent possible, or limited so as not to exceed one hundred (100) people; and

WHEREAS, on March 17, 2020, based on updated information and recommendations from the CDC, the President of the United States, and the White House Coronavirus Task Force, the undersigned issued Executive Order No. 2020-10, directing additional emergency measures in response to the threat posed by COVID-19, to include temporarily prohibiting restaurants from providing certain food services for on-premises consumption and prohibiting events at government facilities that would convene fifty (50) or more people in a single room, area, or other confined indoor or outdoor space; and

WHEREAS, in addition to the foregoing directives, Executive Order No. 2020-10 also "authorize[d] and direct[ed] any agency within the undersigned's Cabinet or any other department within the Executive Branch, as defined by section 1-30-10 of the South Carolina Code of Laws, as amended, through its respective director or secretary, to waive or 'suspend provisions of existing regulations prescribing procedures for conduct of state business if strict compliance with the provisions thereof would in any way prevent, hinder, or delay necessary action in coping with the emergency,' in accordance with section 25-1-440 of the South Carolina Code of Laws and other applicable law"; and

WHEREAS, on March 19, 2020, the undersigned issued Executive Order No. 2020-11, initiating further emergency measures and suspending certain regulations to ensure the proper function and continuity of state government operations and the uninterrupted performance and provision of emergency, essential, or otherwise mission-critical state government services, while simultaneously undertaking additional measures to safeguard the health and safety of state employees, mitigate significant economic impacts and burdens on affected individuals and employers, and provide regulatory relief to expedite emergency response initiatives and enhance the availability of critical healthcare services; and

WHEREAS, on March 21, 2020, the undersigned issued Executive Order No. 2020-12, initiating additional actions to provide regulatory relief to facilitate "social distancing" practices and to mitigate the significant economic impacts of COVID-19 on individuals and businesses throughout the State, particularly restaurants and other food-service establishments; and

WHEREAS, on March 23, 2020, the undersigned issued Executive Order No. 2020-13, authorizing and directing law enforcement officers of the State, or any political subdivision thereof, to, *inter alia*, prohibit or disperse any congregation or gathering of people, unless authorized or in their homes, in groups of three (3) or more people, if any such law enforcement official determines, in their discretion, that any such congregation or gathering of people poses, or could pose, a threat to public health; and

WHEREAS, on March 24, 2020, the undersigned requested that the President of the United States declare that a major disaster exists in the State of South Carolina pursuant to Section 401 of the Stafford Act; and

WHEREAS, on March 27, 2020, the President of the United States granted the undersigned's aforementioned request and declared that a major disaster exists in the State of South Carolina and ordered federal assistance to supplement state, tribal, and local recovery efforts in the areas affected by the COVID-19 pandemic, with an effective date retroactive to January 20, 2020, and continuing; and

WHEREAS, on March 27, 2020, the undersigned issued Executive Order No. 2020-14, directing that individuals who enter the State of South Carolina from an area with substantial community spread of COVID-19 shall be required to isolate or self-quarantine for a period of fourteen (14) days from the time of entry into the State of South Carolina or the duration of the individual's presence in South Carolina, whichever period is shorter; and

WHEREAS, on March 28, 2020, the undersigned issued Executive Order No. 2020-15, declaring a new, separate, and distinct State of Emergency based on a determination that COVID-19 posed an actual, ongoing, and evolving public health threat to the State of South Carolina; and

WHEREAS, on March 29, 2020, the President of the United States extended and expanded the provisions of his Coronavirus Guidelines for America until April 30, 2020, based on the ongoing nature and evolving scope of the global COVID-19 pandemic; and

WHEREAS, on March 30, 2020, the undersigned issued Executive Order No. 2020-16, directing that any and all public beach access points and public piers, docks, wharfs, boat ramps, and boat landings that provide public access to the public waters of this State shall be closed to public access for recreational purposes for the duration of the State of Emergency; and

WHEREAS, on March 31, 2020, the undersigned issued Executive Order No. 2020-17, directing that certain "non-essential" businesses, venues, facilities, services, and activities in the following categories be closed to non-employees and the public, effective Wednesday, April 1, 2020, at 5:00 p.m.: entertainment venues and facilities, recreational and athletic facilities and activities, and close-contact service providers; and

WHEREAS, on April 3, 2020, the undersigned issued Executive Order No. 2020-18, directing that certain additional "non-essential" businesses, venues, facilities, services, and activities in the general category of retail stores be closed to non-employees and the public, effective Monday, April 6, 2020, at 5:00 p.m.; and

WHEREAS, on April 3, 2020, the undersigned issued Executive Order No. 2020-19, directing that effective Friday, April 3, 2020, at 5:00 p.m., any and all individuals, entities, or establishments engaged in the provision of short-term rentals, vacation rentals, or other lodging accommodations or operations in exchange for consideration in the State of South Carolina are prohibited from making or accepting new reservations or bookings from or for individuals residing in or travelling from any country, state, municipality, or other

geographic area subject to or identified in a CDC travel advisory or other CDC notice as a location with extensive community transmission of COVID-19, to include the Tri-State Area (consisting of the States of New York, New Jersey, and Connecticut); and

WHEREAS, in light of the continued spread of COVID-19 and the resulting strain on healthcare resources, after consulting with numerous state and federal agencies, officials, and experts, the undersigned has determined that it is necessary and prudent to take additional proactive action and implement further extraordinary measures to prepare for and respond to the actual, ongoing, and evolving public health threat posed by COVID-19; and

WHEREAS, section 1-3-430 of the South Carolina Code of Laws, as amended, provides that when a state of emergency has been declared, the undersigned "may further, cope with such threats and danger, order and direct any person or group of persons to do any act which would in his opinion prevent or minimize danger to life, limb or property, or prevent a breach of the peace; and he may order any person or group of persons to refrain from doing any act or thing which would, in his opinion, endanger life, limb or property, or cause, or tend to cause, a breach of the peace, or endanger the peace and good order of the State or any section or community thereof, and he shall have full power by use of all appropriate available means to enforce such order or proclamation"; and

WHEREAS, pursuant to section 1-3-460 of the South Carolina Code of Laws, as amended, the foregoing and other emergency authority is "supplemental to and in aid of powers now vested in the Governor under the Constitution, statutory laws[,] and police powers of the State"; and

WHEREAS, in accordance with section 25-1-440 of the South Carolina Code of Laws, as amended, when an emergency has been declared, the undersigned is "responsible for the safety, security, and welfare of the State and is empowered with [certain] additional authority to adequately discharge this responsibility," to include issuing, amending, and rescinding "emergency proclamations and regulations," which shall "have the force and effect of law as long as the emergency exists"; and

WHEREAS, in addition to the foregoing, section 25-1-440 of the South Carolina Code of Laws, authorizes the undersigned, during a declared emergency, to "transfer the direction, personnel, or functions of state departments, agencies, and commissions, or units thereof, for purposes of facilitating or performing emergency services as necessary or desirable," and to "compel performance by elected and appointed state, county, and municipal officials and employees of the emergency duties and functions assigned them in the State Emergency Plan or by Executive Order"; and

WHEREAS, the undersigned is further authorized, pursuant to section 25-1-440 of the South Carolina Code of Laws, to "direct and compel evacuation of all or part of the populace from any stricken or threatened area if this action is considered necessary for the preservation of life or other emergency mitigation, response, or recovery; to prescribe routes, modes of transportation, and destination in connection with evacuation; and to control ingress and egress at an emergency area, the movement of persons within the area, and the occupancy of premises therein"; and

WHEREAS, pursuant to section 25-1-440 of the South Carolina Code of Laws, the undersigned may authorize a party to exceed the terms of any curfew imposed if "the party is a business that sells emergency commodities, an employee of a business that sells emergency commodities, or a local official," and "exceeding the terms of the curfew is necessary to ensure emergency commodities are available to the public"; and

WHEREAS, in accordance with section 16-7-10(A) of the South Carolina Code of Laws, as amended, "[i]n any area designated by the Governor in his proclamation that a state of emergency exists, and during the duration of the proclamation, it is unlawful for a person to: violate a provision in the proclamation including, but not limited to, any curfew set forth by the proclamation; congregate, unless authorized or in their homes, in

groups of three or more and to refuse to disperse upon order of a law enforcement officer; or wilfully fail or refuse to comply with any lawful order or direction of any law enforcement officer"; and

WHEREAS, it is axiomatic that "[t]he health, welfare, and safety of the lives and property of the people are beyond question matters of public concern, and reasonable regulations and laws designed to preserve and protect the same are clearly contained in the police power inherent in the sovereign," 1980 S.C. Op. Att'y Gen. 142 (Sept. 5, 1980); and

WHEREAS, as of April 6, 2020, public health officials have reported over 2,000 cases of COVID-19 in the State of South Carolina; and

WHEREAS, personal liberty comes great responsibility, and it is imperative that the people of the State of South Carolina do their part to slow the spread of COVID-19 and to minimize the resulting strain on healthcare providers and resources by remaining at home whenever possible, which will ultimately facilitate an earlier return to normal operations; and

WHEREAS, for the aforementioned and other reasons, and in recognition and furtherance of the undersigned's authority and responsibility to provide for and ensure the health, safety, security, and welfare of the people of the State of South Carolina, the undersigned has determined that the State of South Carolina must take additional proactive action and implement further extraordinary measures designed to slow the spread of COVID-19 and limit the resulting strain on healthcare resources.

NOW, THEREFORE, by virtue of the authority vested in me as Governor of the State of South Carolina and pursuant to the Constitution and Laws of this State and the powers conferred upon me therein, I hereby order and direct as follows:

Section 1. Home or Work Order

To prepare for and respond to the ongoing and potential impacts associated with COVID-19, and the evolving public health threat posed by the same, and to maintain peace and good order during the State of Emergency, pursuant to the cited authorities and other applicable law, I hereby determine, order, and direct as follows:

A. The State of South Carolina must take additional proactive action and implement further extraordinary measures to prepare for and respond to the actual, ongoing, and evolving public health threat posed by COVID-19, minimize the resulting strain on healthcare providers and resources, and otherwise respond to and mitigate the significant impacts associated with the same. In furtherance of the foregoing, and to avoid potential exposure to, and to slow the spread of, COVID-19, additional action is necessary to ensure the health, safety, security, and welfare of the people of the State of South Carolina.

B. I hereby order and direct that effective Tuesday, April 7, 2020, at 5:00 p.m., any and all residents and visitors of the State of South Carolina are required to limit social interaction, practice "social distancing" in accordance with CDC guidance, and take every possible precaution to avoid potential exposure to, and to slow the spread of, COVID-19, and shall limit their movements outside of their home, place of residence, or current place of abode (collectively, "Residence"), except as allowed by this Order, for purposes of engaging in Essential Business, Essential Activities, or Critical Infrastructure Operations, as set forth below and as such terms are further defined herein.

C. For purposes of this Order, Residence shall mean and include single-family and multi-family dwelling units, modular and mobile homes, hotels, motels, shared rental units, and any other similar dwelling facilities and structures, without regard to the duration or length of occupancy. In the event of an emergency, or if a Residence is or becomes unsafe for any reason, individuals are authorized to leave their Residence and are permitted and encouraged to obtain shelter in a safe and secure alternate location. Individuals experiencing

homelessness are urged to contact the appropriate governmental and other entities for assistance in identifying and obtaining safe shelter.

D. For purposes of this Order, Essential Business does not include the following businesses, venues, facilities, services, and activities, which were previously deemed "non-essential" and directed to close to non-employees and not to open for access or use by the public, or not to take place, as applicable, in accordance with Executive Order No. 2020-18, which superseded, rescinded, and replaced Executive Order No. 2020-17:

1. Entertainment venues and facilities as follows:
   (a) Night clubs
   (b) Bowling alleys
   (c) Arcades
   (d) Concert venues
   (e) Theaters, auditoriums, and performing arts centers
   (f) Tourist attractions (including museums, aquariums, and planetariums)
   (g) Racetracks
   (h) Indoor children's play areas, with the exception of licensed childcare facilities
   (i) Adult entertainment venues
   (j) Bingo halls
   (k) Venues operated by social clubs
2. Recreational and athletic facilities and activities as follows:
   (a) Fitness and exercise centers and commercial gyms
   (b) Spas and public or commercial swimming pools
   (c) Group exercise facilities, to include yoga, barre, and spin studios or facilities
   (d) Spectator sports
   (e) Sports that involve interaction in close proximity to and within less than six (6) feet of another person
   (f) Activities that require the use of shared sporting apparatus and equipment
   (g) Activities on commercial or public playground equipment
3. Close-contact service providers as follows:
   (a) Barber shops
   (b) Hair salons
   (c) Waxing salons
   (d) Threading salons
   (e) Nail salons and spas
   (f) Body-art facilities and tattoo services
   (g) Tanning salons
   (h) Massage-therapy establishments and massage services
4. Retail stores as follows:
   (a) Furniture and home-furnishings stores
   (b) Clothing, shoe, and clothing-accessory stores
   (c) Jewelry, luggage, and leather goods stores
   (d) Department stores, with the exception of hardware and home-improvement stores
   (e) Sporting goods stores
   (f) Book, craft, and music stores
   (g) Flea markets
   (h) Florists and flower stores

E. For purposes of this Order, Essential Activities shall mean and include as follows:

1. Caring for or visiting a family member in another Residence or transporting or travelling with a family member, provided that such activity is conducted with appropriate consideration of, and adherence to, guidance issued by state and federal public health and safety officials, to include the CDC, with regard to "social distancing."

2. Obtaining necessary supplies and services for family or household members, such as food and supplies for household consumption and use, medical supplies or medication, supplies and equipment needed to work from home, and products needed to maintain safety, sanitation, and essential maintenance of the home or residence. Preference should be given to online ordering, home delivery, and curbside pick-up and delivery options and services wherever possible as opposed to in-store shopping.

3. Engaging in activities essential for the health and safety of family or household members, such as seeking medical, behavioral health, or emergency services.

4. Caring for pets, provided that such activity is conducted with appropriate consideration of, and adherence to, guidance issued by state and federal public health and safety officials, to include the CDC, with regard to "social distancing."

5. Engaging in outdoor exercise or recreational activities, provided that a minimum distance of six (6) feet is maintained during such activities between all persons who are not occupants of the same Residence.

6. Attending religious services conducted in churches, synagogues, or other houses of worship.

7. Travelling as required by law, to include attending any court proceedings and transporting children as required by court order or custody agreement.

Any individual leaving his or her Residence as authorized herein shall take reasonable steps to maintain six (6) feet of separation from any other person.

F. For purposes of this Order, Critical Infrastructure Operations shall mean and include as follows:

1. Individuals operating commercial vehicles transporting essential goods and products, such as food, water, medicine, medical supplies and equipment, fuels and petroleum products (to include fuel oil, diesel oil, gasoline, kerosene, propane, and liquid petroleum), livestock, poultry, feed for livestock and poultry, and crops and other agricultural products ready to be harvested (to include timber and wood chips); individuals employed by airlines; and individuals otherwise engaged in commercial transportation activities.

2. Individuals performing or assisting with military, healthcare, public safety, or emergency response operations, as well as any other operations or services identified by the United States Cybersecurity and Infrastructure Security Agency in its March 28, 2020 Memorandum, or any future amendments or supplements thereto, as essential to continued critical infrastructure viability.

G. This Section is subject to any clarification, guidance, rules, regulations, or restrictions issued, provided, or promulgated, or which may be issued, provided, or promulgated, by the South Carolina Department of Commerce ("Department"), as authorized by and in accordance with the Clarification and Provisional Determination Process set forth in Section 2 of Executive Order No. 2020-18.

H. Subject to the emergency rules and restrictions set forth below, this Section does not prohibit the continued operation of retail stores, as set forth above, for the limited purpose of fulfilling online or telephone orders or providing alternate means of purchasing or delivering products or services—to include curbside purchase, pickup, or delivery and home or off-site delivery—provided that such options or measures can be implemented in a manner that facilitates and maintains effective "social distancing" and is consistent with any applicable guidance issued by state and federal public health and safety officials.

I. I hereby order and direct that effective Tuesday, April 7, 2020, at 5:00 p.m., any retail business not identified by general description above, or authorized to continue operations pursuant to any clarification, guidance, rules, regulations, or restrictions issued, provided, or promulgated, or which may be issued, provided, or promulgated, by the Department, as authorized by and in accordance with the Clarification and Provisional Determination Process set forth in Section 2 of Executive Order No. 2020-18, shall be subject to the following emergency rules and restrictions in addition to any other applicable provisions of this Order or any prior Order:

1. Emergency Maximum Occupancy Rate. The business shall limit the number of customers allowed to enter and simultaneously occupy the premises so as not to exceed five (5) customers per 1,000 square feet of retail space, or twenty percent (20%) of the occupancy limit as determined by the fire marshal, whichever is less.

2. Social Distancing Practices. The business shall not knowingly allow customers, patrons, or other guests to congregate within six (6) feet of one another, exclusive of family units.

3. Sanitation. The business shall implement all reasonable steps to comply with any applicable sanitation guidelines promulgated by the CDC, DHEC, or any other state or federal public health officials.

J. This Section shall not be interpreted, applied, implemented, or construed in a manner so as to suspend, restrict, or otherwise limit the sale or transportation of firearms or ammunition or any component thereof.

K. Notwithstanding the foregoing, any and all businesses, venues, facilities, services, and activities in this State are urged to facilitate effective "social distancing" practices. As applicable and to the maximum extent possible, to further promote "social distancing," facilitate self-isolation, and otherwise prevent potential exposure to COVID-19, businesses and organizations are also encouraged to utilize telecommuting or work-from-home options for employees and to provide alternate means of purchasing and delivering products and services, to include online or telephone orders and curbside or off-site deliveries, and individuals are encouraged to utilize such options to support businesses in this State during the ongoing public health emergency.

L. For purposes of this Order, the foregoing definitions do not repeal, by implication or otherwise, the terms and provisions of Executive Order No. 2020-10, as extended by Executive Order No. 2020-15, which directed, *inter alia*, that any and all restaurants or other food-service establishments (collectively, "Restaurants"), as defined and set forth therein, that prepare, produce, or otherwise offer or sell food or beverages of any kind for on-premises consumption in the State of South Carolina, shall suspend services for, and may not permit, on-premises or dine-in consumption.

M. This Order shall not be interpreted, applied, implemented, or construed in a manner so as to suspend, restrict, or otherwise limit the authority of the undersigned or the Department to issue, provide, or promulgate any necessary and appropriate clarification, guidance, rules, regulations, or restrictions regarding the provisions of this Order or of Executive Order No. 2020-18. To this end, I further authorize and direct the Department, in consultation with the Office of the Attorney General of South Carolina ("Attorney General"), to provide or issue any necessary and appropriate supplemental guidance, rules, regulations, or restrictions regarding the application of this Order and to provide clarification, as necessary and appropriate and in accordance with the process set forth in Section 2 of Executive Order No. 2020-18, regarding whether a specific business, venue, facility, service, or activity is required to close or is prohibited from taking place pursuant to this Order, Executive Order No. 2020-18, or both. I further expressly authorize the Office of the Governor ("Office") to provide or issue any necessary and appropriate supplemental guidance, rules, regulations, or restrictions regarding the application of this Order or to otherwise to provide clarification regarding the same, through appropriate means, without the need for further Orders.

N. This Section does not apply to essential or emergency meetings of state or local government bodies or gatherings of government officials or employees or other personnel that may be required in connection with the performance of emergency or essential government functions. However, to the extent possible, state or local government bodies should utilize any available technology or other reasonable procedures to conduct such meetings and accommodate public participation via virtual or other remote or alternate means.

Section 2. Enforcement

A. I hereby authorize any and all law enforcement officers of the State, or any political subdivision thereof, to do whatever may be deemed necessary to maintain peace and good order during the State of Emergency and to enforce the provisions of this Order and any prior or future Orders issued by the undersigned in connection with the present State of Emergency.

B. Pursuant to section 16-7-10(A) of the South Carolina Code of Laws, any individual who "refuse[s] to disperse upon order of a law enforcement officer," "wilfully fail[s] or refuse[s] to comply with any lawful order or direction of any law enforcement officer," or otherwise violates any provision of any Order issued by the undersigned in connection with the State of Emergency "is guilty of a misdemeanor and, upon conviction, must be fined not more than one hundred dollars or imprisoned for not more than thirty days."

C. In accordance with section 1-3-440(4) of the South Carolina Code of Laws, I further authorize, order, and direct any State, county, or city official to enforce the provisions of this Order and any prior or future Orders issued in connection with the present State of Emergency, as necessary and appropriate, in the courts of the State by injunction, mandamus, or other appropriate legal action.

D. In addition to the foregoing, I further authorize, order, and direct DHEC to exercise and utilize any and all necessary and appropriate emergency powers, as set forth in the Emergency Health Powers Act, codified as amended in Title 44, Chapter 4 of the South Carolina Code of Laws, to implement and enforce the provisions of this Order. In accordance with section 44-4-500 of the South Carolina Code of Laws, as amended, DHEC shall continue to "use every available means to prevent the transmission of infectious disease and to ensure that all cases of infectious disease are subject to proper control and treatment."

Section 3. General Provisions

A. This Order is not intended to create, and does not create, any individual right, privilege, or benefit, whether substantive or procedural, enforceable at law or in equity by any party against the State of South Carolina, its agencies, departments, political subdivisions, or other entities, or any officers, employees, or agents thereof, or any other person. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this Order is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this Order, as the undersigned would have issued this Order, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

B. If or to the extent that any political subdivision of this State seeks to adopt or enforce a local ordinance, rule, regulation, or other restriction that conflicts with this Order, this Order shall supersede and preempt any such local ordinance, rule, regulation, or other restriction.

C. This Order is effective immediately and shall remain in effect for the duration of the State of Emergency unless otherwise modified, amended, or rescinded by subsequent Order. Further proclamations, orders, and directives deemed necessary to ensure the fullest possible protection of life and property during this State of Emergency shall be issued orally by the undersigned and thereafter reduced to writing and published for dissemination within the succeeding 24-hour period.

GIVEN UNDER MY HAND AND THE GREAT SEAL OF THE STATE OF SOUTH CAROLINA, THIS 6th DAY OF APRIL, 2020.

HENRY MCMASTER
Governor

Executive Order No. 2020-22

WHEREAS, on March 13, 2020, the undersigned issued Executive Order No. 2020-08, declaring a State of Emergency based on a determination that the 2019 Novel Coronavirus ("COVID-19") posed an imminent public health emergency for the State of South Carolina; and

WHEREAS, on March 13, 2020, the President of the United States declared the ongoing COVID-19 outbreak a pandemic of sufficient severity and magnitude to warrant an emergency declaration for all states, tribes, territories, and the District of Columbia, pursuant to Section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121–5207 ("Stafford Act"); and

WHEREAS, on March 13, 2020, the President of the United States also declared that the COVID-19 pandemic in the United States constitutes a national emergency, pursuant to Sections 201 and 301 of the National Emergencies Act, 50 U.S.C. §§ 1601 *et seq.*, and consistent with Section 1135 of the Social Security Act, 42 U.S.C. § 1320b-5, as amended, retroactive to March 1, 2020; and

WHEREAS, in addition to declaring a State of Emergency on March 13, 2020, the undersigned also issued Executive Order Nos. 2020-07, 2020-09, 2020-10, 2020-11, 2020-12, 2020-13, and 2020-14, initiating and directing various emergency measures to address the significant public health, economic, and other impacts associated with COVID-19 and to mitigate the resulting burdens on healthcare providers, individuals, and businesses in the State of South Carolina; and

WHEREAS, on March 24, 2020, the undersigned requested that the President of the United States declare that a major disaster exists in the State of South Carolina pursuant to Section 401 of the Stafford Act, and on March 27, 2020, the President of the United States granted the undersigned's request and declared that such a major disaster exists and ordered federal assistance to supplement state, tribal, and local recovery efforts in the areas affected by the COVID-19 pandemic, with an effective date retroactive to January 20, 2020, and continuing; and

WHEREAS, on March 28, 2020, the undersigned issued Executive Order No. 2020-15, declaring a new, separate, and distinct State of Emergency based on a determination that COVID-19 posed an actual, ongoing, and evolving public health threat to the State of South Carolina and extending the provisions of the aforementioned Orders for the duration of the State of Emergency, unless otherwise modified, amended, or rescinded; and

WHEREAS, in further proactively preparing for and promptly responding to the ongoing and evolving emergency, the undersigned subsequently issued Executive Order Nos. 2020-16, 2020-17, 2020-18, 2020-19, and 2020-21, initiating and directing additional extraordinary measures deemed necessary and appropriate to cope with the public health threats and dangers and to address the resulting strain on healthcare resources, the

economic consequences for individuals and businesses, and the various other significant impacts associated with COVID-19; and

WHEREAS, the State of South Carolina has taken, and must continue to take, all necessary and appropriate actions in confronting the unprecedented public health threat presented by COVID-19, cases of which have now been identified and reported in each of the State's forty-six (46) counties; and

WHEREAS, due to the evolving nature and scope of the present emergency, the undersigned has also determined that the State of South Carolina must promptly initiate and implement further emergency measures to prepare for and respond to the significant economic and other impacts associated with COVID-19 and to mitigate the resulting burdens on affected individuals and businesses in the State of South Carolina; and

WHEREAS, section 1-3-430 of the South Carolina Code of Laws, as amended, provides that when a state of emergency has been declared, the undersigned "may further, cope with such threats and danger, order and direct any person or group of persons to do any act which would in his opinion prevent or minimize danger to life, limb or property, or prevent a breach of the peace; and he may order any person or group of persons to refrain from doing any act or thing which would, in his opinion, endanger life, limb or property, or cause, or tend to cause, a breach of the peace, or endanger the peace and good order of the State or any section or community thereof, and he shall have full power by use of all appropriate available means to enforce such order or proclamation"; and

WHEREAS, pursuant to section 1-3-460 of the South Carolina Code of Laws, as amended, the foregoing and other emergency authority is "supplemental to and in aid of powers now vested in the Governor under the Constitution, statutory laws[,] and police powers of the State"; and

WHEREAS, in accordance with section 25-1-440 of the South Carolina Code of Laws, as amended, when an emergency has been declared, the undersigned is "responsible for the safety, security, and welfare of the State and is empowered with [certain] additional authority to adequately discharge this responsibility," to include issuing, amending, and rescinding "emergency proclamations and regulations," which shall "have the force and effect of law as long as the emergency exists," and "suspend[ing] provisions of existing regulations prescribing procedures for conduct of state business if strict compliance with the provisions thereof would in any way prevent, hinder, or delay necessary action in coping with the emergency"; and

WHEREAS, in addition to the foregoing, section 25-1-440 of the South Carolina Code of Laws, authorizes the undersigned, during a declared emergency, to "transfer the direction, personnel, or functions of state departments, agencies, and commissions, or units thereof, for purposes of facilitating or performing emergency services as necessary or desirable," and to "compel performance by elected and appointed state, county, and municipal officials and employees of the emergency duties and functions assigned them in the State Emergency Plan or by Executive Order"; and

WHEREAS, it is axiomatic that "[t]he health, welfare, and safety of the lives and property of the people are beyond question matters of public concern, and reasonable regulations and laws designed to preserve and protect the same are clearly contained in the police power inherent in the sovereign," 1980 S.C. Op. Att'y Gen. 142 (Sept. 5, 1980); and

WHEREAS, in recognition of the complexities posed by the current emergency circumstances associated with COVID-19, the United States Department of Labor ("DOL") issued Unemployment Insurance Program Letter No. 10-20 on March 12, 2020 ("DOL Letter No. 10-20"), providing guidance to state workforce agencies on various matters regarding unemployment benefits and "flexibilities related to COVID-19"; and

WHEREAS, to facilitate and expedite the processing of claims submitted by eligible individuals whose employment has been impacted a result of COVID-19, and in response to DOL Letter No. 10-20's recommendation that "states should consider temporarily waiving" any specific requirements related to waiting

periods for individuals who are otherwise eligible for unemployment benefits, the undersigned issued Executive Order No. 2020-11 on March 19, 2020, directing, *inter alia*, the South Carolina Department of Employment and Workforce ("DEW") to waive application of the one-week waiting period for individuals who are otherwise eligible to receive unemployment benefits or to determine that otherwise eligible individuals submitting claims in response to the unique circumstances and public health threat presented by COVID-19 "cannot pursue other employment for the usual one week's waiting period and that the terms of the [applicable] statute cannot be met in such an unusual and limited circumstance," 1989 S.C. Op. Att'y Gen. 286 (Oct. 3, 1989); and

WHEREAS, in addition to the guidance set forth above, DOL Letter No. 10-20 also noted that "states have flexibility to determine what type of work is suitable for an individual and what it means for that individual to be able, available, and seeking work, even when quarantined or otherwise affected by COVID-19" in terms of an individual's eligibility for unemployment benefits; and

WHEREAS, pursuant to Regulation 47–21 of the South Carolina Code of Regulations, 12 C.F.R. § 604.5(a)(3), and DOL Letter No. 10-20, the State of South Carolina may consider an individual able and available for work if their employer temporarily laid them off and the individual remains available to work only for that employer; and

WHEREAS, consistent with the above-referenced DOL guidance and recommendations, the State of South Carolina must continue to take all necessary and appropriate measures to alleviate the financial strain on individuals and employers as a result of COVID-19; and

WHEREAS, for the aforementioned and other reasons, and pursuant to the cited authorities and other applicable law, the undersigned has determined that the evolving public health threat posed by COVID-19 requires additional proactive action by the State of South Carolina and the implementation of further extraordinary measures to cope with the existing or anticipated situation, to include mitigating the significant economic impacts and burdens on affected individuals and employers and providing appropriate administrative and regulatory relief to facilitate the same.

NOW, THEREFORE, by virtue of the authority vested in me as Governor of the State of South Carolina and pursuant to the Constitution and Laws of this State and the powers conferred upon me therein, I hereby order and direct as follows:

Section 1. Authorization for COVID-19 Support Payments by Employers

To prepare for and respond to the significant economic impacts associated with COVID-19, pursuant to the cited authorities and other applicable law, I hereby determine, order, and direct as follows:

A. The State of South Carolina must promptly undertake and implement additional measures to prepare for and respond to the economic impacts associated with COVID-19 and to mitigate the resulting burdens on individuals and businesses in the State of South Carolina. Many South Carolina employers have been financially strained by the significant economic impacts associated with COVID-19, which will negatively affect the ability of many employers to sustain operations at current levels. As a result of such operational reductions, businesses in this State may be required to furlough current employees. For purposes of this Order, a furlough shall mean and refer to a temporary period of time during which an employee performs no personal services for the employer as a result of a layoff caused by the economic impacts of COVID-19. Employers have stated that furloughs may be necessary to sustain an adequate level of working capital and to maintain a ready workforce in preparation for resuming operations when the risks associated with COVID-19 have dissipated. In acknowledging that employees may need to be furloughed due to the ongoing and anticipated economic impacts associated with COVID-19, some employers have indicated a desire to offset the financial impacts of such furloughs by making voluntary COVID-19-related support payments ("COVID-19 Support Payments"), as set forth below, to certain employees.

B. For purposes of this Order, COVID-19 Support Payments shall mean a voluntary payment, or series of payments, made by an employer to an employee in response to furloughing the employee, which is for services rendered by the employee in the past, which the employee or the employee's estate is not obligated to repay, which is provided without obligation for the employee to perform or not perform any act in connection with the individual's status as an employee, and which is made pursuant to a plan provided to DEW on a form that DEW shall prepare and publish on its website ("COVID-19 Support Payments Plan"), as set forth below and further defined herein. COVID-19 Support Payments shall be classified as a form of severance pay. South Carolina courts have interpreted severance pay as a form of payment for services previously rendered and, thus, not "wages" as that term is currently defined in section 41-27-380 of the South Carolina Code of Laws. *See S. Bell Tel. & Tel. Co. v. S.C. Employment Sec. Comm'n*, 240 S.C. 40, 45, 124 S.E.2d 505, 507 (1962). Classification of COVID-19 Support Payments as non-wages will ensure that such payments do not reduce the unemployment benefits an otherwise eligible individual would be entitled to receive, in accordance with the terms of Executive Order No. 2020-11, as extended by Executive Order No. 2020-15, and as otherwise provided by law.

C. A COVID-19 Support Payments Plan submitted to DEW must detail the anticipated length of the furlough, state the amount of the COVID-19 Support Payments, identify the names of the employees receiving the COVID-19 Support Payments, and include an attestation that the employer is not making the COVID-19 Support Payments as a form of remuneration for the employees' performance of personal services during the furlough and that employees are not required to return or repay the COVID-19 Support Payments. Further, employers shall file employer-filed unemployment insurance claims, according to guidance provided by DEW, for each employee receiving COVID-19 Support Payments. A COVID-19 Support Payments Plan that satisfies the requirements set forth herein is not required to be approved by DEW prior to an employer making COVID-19 Support Payments.

D. I hereby authorize and direct DEW to interpret furloughed recipients of COVID-19 Support Payments as unemployed, pursuant to section 41-27-370 of the South Carolina Code of Laws and Regulation 47–20 of the South Carolina Code of Regulations, in response to or associated with the unique circumstances and public health threat presented by COVID-19. I further authorize and instruct DEW to implement, interpret, and apply the foregoing directives, as necessary and appropriate, in a manner such that an employee will not be considered as having been overpaid unemployment insurance benefits solely because the employee received COVID-19 Support Payments pursuant to a COVID-19 Support Payments Plan. Subject to any further clarification or guidance issued by DEW, and to the maximum extent permitted by state and federal law, this Section shall apply to any COVID-19 Support Payments paid by an employer from the date of this Order and for the duration of the State of Emergency.

Section 2. General Provisions

A. This Order is not intended to create, and does not create, any individual right, privilege, or benefit, whether substantive or procedural, enforceable at law or in equity by any party against the State of South Carolina, its agencies, departments, political subdivisions, or other entities, or any officers, employees, or agents thereof, or any other person.

B. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this Order is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this Order, as the undersigned would have issued this Order, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

C. This Order is effective immediately and shall remain in effect for the duration of the State of Emergency unless otherwise modified, amended, or rescinded by subsequent Order. Further proclamations, orders, and directives deemed necessary to ensure the fullest possible protection of life and property during this State of Emergency shall be issued orally by the undersigned and thereafter reduced to writing and published for dissemination within the succeeding 24-hour period.

GIVEN UNDER MY HAND AND THE GREAT SEAL OF THE STATE OF SOUTH CAROLINA, THIS 7th DAY OF APRIL, 2020.

HENRY MCMASTER
Governor

DEPARTMENT OF CONSUMER AFFAIRS

NOTICE OF GENERAL PUBLIC INTEREST

CHANGES IN DOLLAR AMOUNTS

The Administrator of the Department of Consumer Affairs announces changes in dollar amounts pursuant to Sections 37-1-109 and 37-6-104(1)(e). Designated dollar amounts in the Consumer Protection Code are subject to change on July 1 of every even-numbered year based on the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI) for December of the preceding year. Due to the change between December 1976 CPI and December 2019 CPI, the designated dollar amounts will increase by 320% of the original amount, with the exception of Sections 37-2-203(2) and 37-3-203(2) which have a self-executing formula of 40% of the amount in Sections 37-2-203(1) and 37-3-203(1), respectively. The designated dollar amounts are found in Sections 37-2-104(1)(e), 37-2-106(1)(b), 37-2-203(1), 37-2-407(1), 37-2-705(1)(a), 37-2-705(1)(b), 37-3-104(d), 37-3-203(1), 37-3-510, 37-3-511, 37-3-514, 37-5-103(2), (3) and (4), 37-10-103, and 37-23-80. Pursuant to Section 37-1-109(4), the Administrator is required to announce these changes by publication in the State Register by April 30 of each even-numbered year. The historical dollar amounts and additional information are available on the Department's website at consumer.sc.gov.

		Change Dollar Amount	
Section		From 7/1/2018 to 6/30/2020	To 7/1/2020 to 6/30/2022
2.104(1)(e)	Consumer Credit Sale	92,500.00	105,000.00
2.106(1)(b)	Consumer Lease	92,500.00	105,000.00
2.203(1)	Delinquency Charge – Sales	18.50	21.00
2.203(2)	Minimum Delinquency Charge	7.40	8.40
2.407(1)	Security Interest – Sales	3,700.00	4,200.00
		1,110.00	1,260.00
2.705(1)(a)	Delinquency Charge – Rental Purchase	11.60	16.80
2.705(1)(b)	Delinquency Charge – Rental Purchase	5.80	8.40
3.104(d)	Consumer Loans	92,500.00	105,000.00
3.203(1)	Delinquency Charge – Loans	18.50	21.00
3.203(2)	Minimum Delinquency	7.40	8.40
3.510	Land as Security – Supervised Loans	3,700.00	4,200.00
3.511	Maximum Loan Term	3,700.00	4,200.00
		1,110.00	1,260.00
3.514	Attorney's Fees – Supervised Loans	3,700.00	4,200.00
5.103(2), (3) & (4)	Deficiency Judgment	5,550.00	6,300.00
10.103	Prepayment Penalty	270,000.00	630,000.00
23.80	Prepayment Penalty	270,000.00	630,000.00

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

NOTICE OF GENERAL PUBLIC INTEREST

Notice of Cancellation and Rescheduling of Public Hearing
State Register Document No. 4958

April 24, 2020

The Department of Health and Environmental Control published a Notice of Proposed Regulation and Opportunity for Public Comment in the State Register on February 28, 2020, identified as Document No. 4958, to propose amendment of R.61-63, Radioactive Materials (Title A). The aforementioned Notice scheduled a public comment period that closed March 30, 2020, and gave notice of a public hearing scheduled before the Board of Health and Environmental Control (Board) for May 7, 2020.

Due to the COVID-19 pandemic, the public hearing originally scheduled before the Board for May 7, 2020, has been cancelled and rescheduled for July 9, 2020. The public hearing will be held July 9, 2020, in the Board Room (3420), Third Floor, Aycock Building, at the Department of Health and Environmental Control, 2600 Bull Street, Columbia, S.C. Due to admittance procedures at the DHEC building, all visitors must enter through the Bull Street entrance and register at the front desk.

The Board meeting commences at 10:00 a.m. at which time the Board will consider items on its agenda in the order presented. The order of presentation for public hearings will be noticed in the Board's agenda to be published by the Department 24 hours in advance of the meeting at http://www.scdhec.gov/Agency/docs/AGENDA.PDF. The agenda will also provide notice of cancellation of any change to meeting times. Persons desiring to make oral comments at the public hearing are asked to limit their statements to five minutes or less and, as a courtesy, are asked to provide written copies of their presentations for the record.

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

NOTICE OF GENERAL PUBLIC INTEREST

In accordance with Section 44-7-200(D), Code of Laws of South Carolina, the public is hereby notified that a Certificate of Need application has been accepted for filing and publication on **April 24, 2020** 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 Arnisha Keitt, Certificate of Need Program, 2600 Bull Street, Columbia, South Carolina 29201 at (803) 545-3495.

Affecting Abbeville County
Intramed Plus d/b/a Intramed Plus, Inc.
Establishment of a Specialty Home Health Agency limited to home infusion nursing services in Abbeville County at a total project cost of $2,000.

Prisma Health-Upstate d/b/a Prisma Health Home Health Agency
Establishment of a Home Health Agency in Abbeville County at a total project cost of $1,800.

Affecting Aiken County
Intramed Plus d/b/a Intramed Plus, Inc.
Establishment of a Specialty Home Health Agency limited to home infusion nursing services in Aiken County at a total project cost of $2,000.

Affecting Allendale County
Intramed Plus d/b/a Intramed Plus, Inc.
Establishment of a Specialty Home Health Agency limited to home infusion nursing services in Allendale County at a total project cost of $2,000.

Affecting Anderson County
Intramed Plus d/b/a Intramed Plus, Inc.
Establishment of a Specialty Home Health Agency limited to home infusion nursing services in Anderson County at a total project cost of $2,000.

Affecting Bamberg County
Intramed Plus d/b/a Intramed Plus, Inc.
Establishment of a Specialty Home Health Agency limited to home infusion nursing services in Bamberg County at a total project cost of $2,000.

Affecting Barnwell County
Intramed Plus d/b/a Intramed Plus, Inc.
Establishment of a Specialty Home Health Agency limited to home infusion nursing services in Barnwell County at a total project cost of $2,000.

Affecting Beaufort County
Intramed Plus d/b/a Intramed Plus, Inc.
Establishment of a Specialty Home Health Agency limited to home infusion nursing services in Beaufort County at a total project cost of $2,000.

Affecting Berkeley County
Intramed Plus d/b/a Intramed Plus, Inc.
Establishment of a Specialty Home Health Agency limited to home infusion nursing services in Berkeley County at a total project cost of $2,000.

Affecting Calhoun County
Intramed Plus d/b/a Intramed Plus, Inc.
Establishment of a Specialty Home Health Agency limited to home infusion nursing services in Calhoun County at a total project cost of $2,000.

Affecting Charleston County
Intramed Plus d/b/a Intramed Plus, Inc.
Establishment of a Specialty Home Health Agency limited to home infusion nursing services in Charleston County at a total project cost of $2,000.

Affecting Cherokee County
Intramed Plus d/b/a Intramed Plus, Inc.
Establishment of a Specialty Home Health Agency limited to home infusion nursing services in Cherokee County at a total project cost of $2,000.

Affecting Chester County
Intramed Plus d/b/a Intramed Plus, Inc.
Establishment of a Specialty Home Health Agency limited to home infusion nursing services in Chester County at a total project cost of $2,000.

Affecting Chesterfield County
Intramed Plus d/b/a Intramed Plus, Inc.
Establishment of a Specialty Home Health Agency limited to home infusion nursing services in Chesterfield County at a total project cost of $2,000.

Affecting Clarendon County
Intramed Plus d/b/a Intramed Plus, Inc.
Establishment of a Specialty Home Health Agency limited to home infusion nursing services in Clarendon County at a total project cost of $2,000.

Affecting Colleton County
Intramed Plus d/b/a Intramed Plus, Inc.
Establishment of a Specialty Home Health Agency limited to home infusion nursing services in Colleton County at a total project cost of $2,000.

Affecting Darlington County
Intramed Plus d/b/a Intramed Plus, Inc.
Establishment of a Specialty Home Health Agency limited to home infusion nursing services in Darlington County at a total project cost of $2,000.

Affecting Dorchester County
Intramed Plus d/b/a Intramed Plus, Inc.
Establishment of a Specialty Home Health Agency limited to home infusion nursing services in Dorchester County at a total project cost of $2,000.

Affecting Edgefield County
Intramed Plus d/b/a Intramed Plus, Inc.
Establishment of a Specialty Home Health Agency limited to home infusion nursing services in Edgefield County at a total project cost of $2,000.

Affecting Fairfield County
Intramed Plus d/b/a Intramed Plus, Inc.
Establishment of a Specialty Home Health Agency limited to home infusion nursing services in Fairfield County at a total project cost of $2,000.

Affecting Florence County
Intramed Plus d/b/a Intramed Plus, Inc.
Establishment of a Specialty Home Health Agency limited to home infusion nursing services in Florence County at a total project cost of $2,000.

Affecting Georgetown County
Intramed Plus d/b/a Intramed Plus, Inc.
Establishment of a Specialty Home Health Agency limited to home infusion nursing services in Georgetown County at a total project cost of $2,000.

Affecting Greenville County
Intramed Plus d/b/a Intramed Plus, Inc.
Establishment of a Specialty Home Health Agency limited to home infusion nursing services in Greenville County at a total project cost of $2,000.

Affecting Greenwood County
Intramed Plus d/b/a Intramed Plus, Inc.
Establishment of a Specialty Home Health Agency limited to home infusion nursing services in Greenwood County at a total project cost of $2,000.

Prisma Health-Upstate d/b/a Prisma Health Home Health Agency
Establishment of a Home Health Agency in Greenwood County at a total project cost of $4,600.

Affecting Hampton County
Intramed Plus d/b/a Intramed Plus, Inc.
Establishment of a Specialty Home Health Agency limited to home infusion nursing services in Hampton County at a total project cost of $2,000.

Affecting Horry County
Intramed Plus d/b/a Intramed Plus, Inc.
Establishment of a Specialty Home Health Agency limited to home infusion nursing services in Horry County at a total project cost of $2,000.

Affecting Jasper County
Intramed Plus d/b/a Intramed Plus, Inc.
Establishment of a Specialty Home Health Agency limited to home infusion nursing services in Jasper County at a total project cost of $2,000.

Affecting Kershaw County
Intramed Plus d/b/a Intramed Plus, Inc.
Establishment of a Specialty Home Health Agency limited to home infusion nursing services in Kershaw County at a total project cost of $2,000.

Affecting Lancaster County
Intramed Plus d/b/a Intramed Plus, Inc.
Establishment of a Specialty Home Health Agency limited to home infusion nursing services in Lancaster County at a total project cost of $2,000.

Affecting Laurens County
Intramed Plus d/b/a Intramed Plus, Inc.
Establishment of a Specialty Home Health Agency limited to home infusion nursing services in Laurens County at a total project cost of $2,000.

Prisma Health-Upstate d/b/a Prisma Health Home Health Agency
Establishment of a Home Health Agency in Laurens County at a total project cost of $16,800.

Affecting Lee County
Intramed Plus d/b/a Intramed Plus, Inc.
Establishment of a Specialty Home Health Agency limited to home infusion nursing services in Lee County at a total project cost of $2,000.

Affecting Lexington County
Intramed Plus d/b/a Intramed Plus, Inc.
Establishment of a Specialty Home Health Agency limited to home infusion nursing services in Lexington County at a total project cost of $12,000.

Affecting Marion County
Intramed Plus d/b/a Intramed Plus, Inc.
Establishment of a Specialty Home Health Agency limited to home infusion nursing services in Marion County at a total project cost of $2,000.

Affecting Marlboro County
Intramed Plus d/b/a Intramed Plus, Inc.
Establishment of a Specialty Home Health Agency limited to home infusion nursing services in Marlboro County at a total project cost of $2,000.

Affecting McCormick County
Intramed Plus d/b/a Intramed Plus, Inc.
Establishment of a Specialty Home Health Agency limited to home infusion nursing services in McCormick County at a total project cost of $2,000.

Affecting Newberry County
Intramed Plus d/b/a Intramed Plus, Inc.
Establishment of a Specialty Home Health Agency limited to home infusion nursing services in Newberry County at a total project cost of $2,000.

Prisma Health-Upstate d/b/a Prisma Health Home Health Agency
Establishment of a Home Health Agency in Newberry County at a total project cost of $3,700.

Affecting Oconee County
Intramed Plus d/b/a Intramed Plus, Inc.
Establishment of a Specialty Home Health Agency limited to home infusion nursing services in Oconee County at a total project cost of $2,000.

Affecting Orangeburg County
Intramed Plus d/b/a Intramed Plus, Inc.
Establishment of a Specialty Home Health Agency limited to home infusion nursing services in Orangeburg County at a total project cost of $2,000.

Ambulatory Partners, LLC
Construction of a 16,640 sf Multi-Specialty Ambulatory Surgery Facility with 2 operating rooms and diagnostic imaging in Orangeburg county at a total project cost of $12,537,535.

Affecting Pickens County
Intramed Plus d/b/a Intramed Plus, Inc.
Establishment of a Specialty Home Health Agency limited to home infusion nursing services in Pickens County at a total project cost of $2,000.

Affecting Richland County
Intramed Plus d/b/a Intramed Plus, Inc.
Establishment of a Specialty Home Health Agency limited to home infusion nursing services in Richland County at a total project cost of $2,000.

Encompass Health Rehabilitation Hospital of Irmo, LLC
Construction for the establishment of a 50 bed Freestanding Inpatient Rehabilitation Hospital in Richland county at a total project cost of $36,661,437.

Affecting Saluda County
Intramed Plus d/b/a Intramed Plus, Inc.
Establishment of a Specialty Home Health Agency limited to home infusion nursing services in Saluda County at a total project cost of $2,000.

Affecting Spartanburg County
Intramed Plus d/b/a Intramed Plus, Inc.
Establishment of a Specialty Home Health Agency limited to home infusion nursing services in Spartanburg County at a total project cost of $2,000.

Prisma Health-Upstate d/b/a Prisma Health Home Health Agency
Establishment of a Home Health Agency in Spartanburg county at a total project cost of $18,600.

Affecting Sumter County
Intramed Plus d/b/a Intramed Plus, Inc.
Establishment of a Specialty Home Health Agency limited to home infusion nursing services in Sumter County at a total project cost of $2,000.

Affecting Union County
Intramed Plus d/b/a Intramed Plus, Inc.
Establishment of a Specialty Home Health Agency limited to home infusion nursing services in Union County at a total project cost of $2,000.

Affecting Williamsburg County
Intramed Plus d/b/a Intramed Plus, Inc.
Establishment of a Specialty Home Health Agency limited to home infusion nursing services in Williamsburg County at a total project cost of $2,000.

Affecting York County
Intramed Plus d/b/a Intramed Plus, Inc.
Establishment of a Specialty Home Health Agency limited to home infusion nursing services in York County at a total project cost of $2,000.

In accordance with Section 44-7-210(A), Code of Laws of South Carolina, and S.C. DHEC Regulation 61-15, the public and affected persons are hereby notified that for the following projects, applications have been deemed complete, and the review cycle has begun. A proposed decision will be made as early as 30 days, but no later than 120 days, from **April 24, 2020**. "Affected persons" have 30 days from the above date to submit requests for a public hearing to Arnisha Keitt, Certificate of Need Program, 2600 Bull Street, Columbia, South Carolina 29201. If a public hearing is timely requested, the Department's decision will be made after the public hearing, but no later than 150 days from the above date. For further information call (803) 545-3495.

Affecting Greenville County
St. Francis Hospital, Inc. d/b/a Bon Secours St. Francis Simpsonville-Freestanding Emergency Department
Construction of a freestanding emergency department at a total project cost of $24,315,576.

Affecting Horry County
McLeod Loris Seacoast Hospital d/b/a McLeod Health Seacoast
Addition of 50 general hospital beds for a total of 155 general hospital beds at a total project cost of $16,280,000.

Affecting York County
Amisub of South Carolina, Inc. d/b/a Piedmont Medical Center
Addition of 36 general hospital beds for a total of 268 general hospital beds at a total project cost of $333,810.

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

NOTICE OF GENERAL PUBLIC INTEREST

DHEC-Bureau of Land and Waste Management, File # 54872
International Knife and Saw Site

NOTICE OF VOLUNTARY CLEANUP CONTRACT, CONTRIBUTION PROTECTION, AND COMMENT PERIOD

PLEASE TAKE NOTICE that the South Carolina Department of Health and Environmental Control (the Department) intends to enter into a Voluntary Cleanup Contract (VCC) with International Knife & Saw, Inc. (the Responsible Party). The VCC provides that the Responsible Party, with DHEC's oversight, will fund and perform future response actions at the International Knife and Saw facility located in Florence County at 1435 North Cashua Drive, Florence, South Carolina and any surrounding area impacted by the migration of hazardous substances, pollutants, or contaminants (the Site).

Response actions addressed in the VCC include, but may not be limited to, the Responsible Party funding and performing a remedial investigation and, if necessary, an evaluation of cleanup alternatives for addressing any contamination. Further, the Responsible Party shall reimburse the Department's future costs of overseeing the work performed by the Responsible Party and other Department response costs pursuant to the VCC.

The VCC is subject to a thirty-day public comment period consistent with the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. Section 9613, and the South Carolina Hazardous Waste Management Act (HWMA), S.C. Code Ann. Section 44-56-200 (as amended). Notices of contribution protection and comment period will be provided to other known potentially responsible parties. The VCC is available:

(1) On-line at http://www.scdhec.gov/PublicNotices; or
(2) By contacting Elisa Vincent at 803-898-0882 or vincenef@dhec.sc.gov.

Any comments to the proposed VCC must be submitted in writing, postmarked no later than May 25th, 2020, and addressed to: Elisa Vincent, DHEC-BLWM-SARR, 2600 Bull Street, Columbia, SC 29201.

Upon the successful completion of the VCC, the Responsible Party will receive a covenant not to sue for the work done in completing the response actions specifically covered in the VCC and completed in accordance with the approved work plans and reports. Upon execution of the VCC, the Responsible Party shall be deemed to have resolved their liability to the State in an administrative settlement for purposes of, and to the extent authorized under CERCLA, 42 U.S.C. Sections 9613(f)(2) and 9613(f)(3)(B), and under HWMA, S.C. Code Ann. Section 44-56-200, for the matters addressed in the VCC. Further, to the extent authorized under 42 U.S.C. Section 9613(f)(3)(B), S.C. Code Ann. Section 44-56-200, the Responsible Party may seek contribution from any person who is not a party to this administrative settlement.

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

NOTICE OF GENERAL PUBLIC INTEREST

NOTICE OF PUBLIC COMMENT PERIOD FOR SOUTH CAROLINA 2020-2021 ANNUAL MONITORING NETWORK PLAN

Statutory Authority: S.C. Code Sections 48-1-10 et seq.

The South Carolina Department of Health and Environmental Control (Department) is publishing this Notice of General Public Interest to provide opportunity to comment on the proposed 2020-2021 South Carolina Annual Ambient Air Monitoring Network Plan (Network Plan) to meet obligations to the U.S. Environmental Protection Agency (EPA) and provides documentation of the establishment and maintenance of an air quality surveillance system that consists of a network of state or local air monitoring stations (SLAMS) that includes federal reference method (FRM) and federal equivalent method (FEM) monitors that are part of SLAMS, national core multipollutant monitoring stations (NCore), chemical speciation network (CSN), and special purpose monitor (SPM) stations. The proposed Network Plan includes a statement of whether the operation of each monitor meets the requirements of Appendix E of 40 CFR Part 58, Ambient Air Quality Surveillance. As part of this Network Plan, the Department is also including an annual assessment as required under 40 CFR 51.1205(b) for those facilities that demonstrated attainment with the 1-hr Sulfur Dioxide (SO_2) National Ambient Air Quality Standard (NAAQS) as part of the Data Requirements Rule (DRR) using modeled emission rates that were less than the maximum permit allowable rates. The Network Plan is available for public inspection and comment for 30 days prior to submission to the EPA to include any received comments. To be considered, the Department must receive comments no later than 5:00 p.m. on May 26, 2020, the close of the comment period.

The Department is also providing the interested public with the opportunity to request a public hearing on the issue. If requested, the Department will hold a public hearing on June 4, 2020, at 10:00 a.m., in Room 2151 of the Sims Building, 2600 Bull Street, Columbia, South Carolina. In the event that a requested public hearing cannot be held in person due to the COVID-19 guidelines restricting in-person meetings, the public hearing will be held using an alternative method that provides the public the ability to participate remotely. Pursuant to 40 CFR 51.102, if the Department does not receive a request for a public hearing by the close of the comment period, 5:00 p.m. on May 26, 2020, the Department will cancel the public hearing. If the public hearing will be held remotely using an alternative method, or if the Department cancels the public hearing, then the Department will notify the public and provide instructions for accessing any remote public hearing (if a hearing is requested) at least one week prior to the scheduled hearing via the Department's Public Notices webpage: http://www.scdhec.gov/PublicNotices/. Interested persons may also contact G. Renee' Madden, Air Data Analysis and Support Section, Bureau of Air Quality, 2600 Bull Street, Columbia, SC 29201; via phone at (803) 898-3822; or email at maddengr@dhec.sc.gov for more information or to find out if the Department will hold the public hearing. A copy of the proposed 2020-2021 South Carolina Annual Ambient Air Monitoring Network Plan is also located on the Department's Public Notices webpage: https://apps.dhec.sc.gov/Environment/PublicNotices/SearchAndDisplay/Display/11603

Synopsis:

In October 2006 and in April 2016, the EPA published requirements for an annual monitoring network plan (Network Plan). This Network Plan, as required and described in 40 CFR Part 58.10, Annual Monitoring Network Plan and Periodic Network Assessment, must contain the following information for each monitoring station in the network:

1. The Air Quality System (AQS) site identification number (ID) for existing stations,

2. Location of each monitoring station, including street address and geographical coordinates,

3. The sampling and analysis method used for each measured parameter,

4. The operating schedule for each monitor,

5. Any proposal to remove or relocate a monitoring station within a period of eighteen months following the network plan submittal,

6. The monitoring objective and spatial scale of representativeness for each monitor,

7. The identification of any sites that are suitable for comparison against the Particulate Matter less than 2.5 microns ($PM_{2.5}$) NAAQS, and

8. The MSA, Core-Based Statistical Area (CBSA), Combined Statistical Area (CSA), or other area represented by the monitor.

Any network modifications to SLAMS networks are subject to the approval of the EPA Regional Administrator, who shall approve or disapprove the plan within 120 days of submission of a complete plan to the EPA. This 2020-2021 South Carolina Annual Ambient Air Monitoring Network Plan covers the eighteen-month period from July 1, 2020, through December 31, 2021, and includes all anticipated modifications to the monitoring network.

The DRR annual assessment includes, for the applicable facilities, a comparison of the actual SO_2 emissions at each facility versus the SO_2 emissions included in the 1-hr SO_2 modeling demonstration and a determination as to whether the modeling performed for the DRR is still adequate to demonstrate attainment with the 1-hr SO_2 NAAQS.

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

NOTICE OF GENERAL PUBLIC INTEREST

Section IV of R.61-98, the State Underground Petroleum Environmental Response Bank (SUPERB) Site Rehabilitation and Fund Access Regulation, requires that the Department of Health and Environmental Control evaluate and certify site rehabilitation contractors to perform site rehabilitation of releases from underground storage tanks under the State Underground Petroleum Environmental Response Bank (SUPERB) Act.

Class I Contractors perform work involving the collection and interpretation of investigative data; the evaluation of risk; and/or the design and implementation of corrective action plans. Class I applicants must satisfy registration requirements for a Professional Engineer or Geologist in South Carolina. Class II Contractors perform work involving routine investigative activities (e.g., soil or ground water sampling, well installation, aquifer testing) where said activities do not require interpretation of the data and are performed in accordance with established regulatory or industry standards.

Pursuant to Section IV.B.1., the Department is required to place a list of those contractors requesting certification on public notice and accept comments from the public for a period of thirty (30) days. If you wish to provide comments regarding the companies and/or individuals listed below, please submit your comments in writing, no later than May 25, 2020 to:

Contractor Certification Program
South Carolina Department of Health and Environmental Control
Bureau of Land and Waste Management - Underground Storage Tank Program
Attn: Michelle Dennison
2600 Bull Street
Columbia, SC 29201

The following companies have applied for certification as Underground Storage Tank Site Rehabilitation Contractor:

Class I

Loureiro Engineering Assoc., Inc.
Attn: Sean A. Crowell, PE
2025 Energy Dr.
Apex, NC 27502

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 61
Statutory Authority: 1976 Code Sections 44-56-10 et seq.

Notice of Drafting:

The Department of Health and Environmental Control ("Department") proposes amending R.61-79, Hazardous Waste Management Regulations. Interested persons may submit comment(s) on the proposed amendment to Joe Bowers of the Bureau of Land and Waste Management; S.C. Department of Health and Environmental Control, 2600 Bull Street, Columbia, S.C. 29201; bowersjb@dhec.sc.gov. To be considered, the Department must receive comments no later than 5:00 p.m. on May 26, 2020, the close of the Notice of Drafting comment period.

Synopsis:

Pursuant to R.61-79, Hazardous Waste Management Regulations, the Department has the authority to manage hazardous wastes in the state of South Carolina. The Department proposes amending R. 61-79 to adopt two final rules published by the United States Environmental Protection Agency ("EPA"). Because these two rules make standards less stringent than the standards authorized states have been enforcing, the EPA has made adoption optional. The two final rules are summarized as follows:

1. The Department proposes adopting the rule titled "Safe Management of Recalled Airbags," published on November 30, 2018, at 83 FR 61552-61563. This rule provides a conditional exemption from the Resource Conservation and Recovery Act ("RCRA") hazardous waste requirements for entities, including automobile dealerships, automotive salvage and scrap yards, independent repair facilities and collision centers, that collect airbag modules and inflators ("airbag waste") from automobiles as long as certain conditions are met. This rule will help facilitate a more expediated removal of defective airbag inflators.

2. The Department proposes adopting the rule titled "Universal Waste Regulations: Addition of Aerosol Cans," published on December 9, 2019, at 84 FR 67202-67220. This rule adds hazardous waste aerosol cans to the universal waste program under the federal Resource Conservation and Recovery Act ("RCRA") regulations. This change is expected to reduce regulatory burdens for retail stores and other establishments that generate, manage and dispose of aerosol cans by providing a clear, protective system for handling waste aerosol cans. This will promote the collection and recycling of aerosol cans and encourage the development of municipal and commercial programs to reduce the amount of aerosol can waste going to municipal solid waste landfills or combustors.

The Department may also include changes such as corrections for clarity and readability, grammar, punctuation, codification, and other such regulatory text improvements.

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

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 61
Statutory Authority: 1976 Code Sections 44-56-10 et seq.

Notice of Drafting:

The Department of Health and Environmental Control ("Department") proposes amending R.61-79, Hazardous Waste Management Regulations. Interested persons may submit comment(s) on the proposed amendment to Joe Bowers of the Bureau of Land and Waste Management; S.C. Department of Health and Environmental Control,

2600 Bull Street, Columbia, S.C. 29201; bowersjb@dhec.sc.gov. To be considered, the Department must receive comments no later than 5:00 p.m. on May 26, 2020, the close of the Notice of Drafting comment period.

Synopsis:

Pursuant to R.61-79, Hazardous Waste Management Regulations, the Department has the authority to manage hazardous wastes in the state of South Carolina. The Department proposes adopting the rule titled "Management Standards for Hazardous Waste Pharmaceuticals and Amendment to the P075 Listing for Nicotine," published on February 22, 2019, at 84 FR 5816-5950. This rule, published in the Federal Register by the Environmental Protection Agency ("EPA"), creates new standards for the management of hazardous waste pharmaceuticals by healthcare facilities and reverse distributors in lieu of the generator regulations in Part 262 of R.61-79. To better protect drinking and surface water, this rule establishes prohibitions on facilities from disposing of hazardous waste pharmaceuticals down the drain. This regulation also maintains the household hazardous waste exemption for pharmaceuticals collected during pharmaceutical take-back programs and events, while ensuring their proper disposal and codifies EPA's prior policy on the regulatory status of nonprescription pharmaceuticals going through reverse logistics. In addition, under this new rule, U.S. Food and Drug Administration-approved, over-the-counter nicotine replacement therapies (i.e., nicotine patches, gums and lozenges) will no longer be considered hazardous waste when discarded. This final rule also establishes a policy on the regulatory status of unsold retail items that are not pharmaceuticals and are managed via reverse logistics.

Pursuant to the Administrative Procedures Act, S.C. Code Ann. Section 1-23-120(H)(1), this proposed amendment is exempt from General Assembly review because it is necessary to maintain compliance with federal law.

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

CHAPTER 30

Statutory Authority: 1976 Code Sections 48-39-10 et seq.

Notice of Drafting:

The Department of Health and Environmental Control ("Department") proposes amending R.30-1, Statement of Policy, and R.30-12, Specific Project Standards for Tidelands and Coastal Waters, the Department's Coastal Division regulations. Interested persons may submit comment(s) on the proposed amendments to Tara Maddock of the Office of Ocean and Coastal Resource Management; S.C. Department of Health and Environmental Control, 1362 McMillan Avenue, Suite 400, Charleston, S.C., 29405; or by email at maddoctc@dhec.sc.gov. To be considered, the Department must receive comments no later than 5:00 p.m. on May 26, 2020, the close of the draft comment period.

Synopsis:

Pursuant to R.30-1 through 30-18, Coastal Division Regulations, the Department seeks to implement the policies of the S.C. Coastal Zone Management Act (S.C. Code Section 48-39-10 et seq.) to promote the economic and social welfare of the citizens of this State while protecting the sensitive and fragile areas in the coastal counties and promoting sound development of coastal resources. The Department proposes amending R.30-12.C and adding new sections R.30-1.D(31) and R.30-12.Q to provide a definition and add project standards for living shorelines. Coastal property owners in South Carolina have expressed an increased interest in the use of living shorelines as an alternative to hardened erosion control structures within the estuarine environment. Coastal Division regulations currently do not provide guidance specific for living shoreline installations. The lack of a regulatory definition or specific project standards for living shorelines has resulted in longer permitting review times and uncertainties about project performance. The proposed amendments will allow for a more efficient authorization process by defining which projects qualify as a living shoreline and establishing specific standards for living shoreline installations. This will help ensure a project's design will accomplish intended goals.

The proposed amendments will be developed using scientific data and monitoring results from existing living shoreline installations in South Carolina and input from state and federal agencies, stakeholder working groups, and other interested parties. By providing living shorelines as an alternative method of estuarine shoreline stabilization, additional benefits to water quality and oyster stock may also be realized.

The Department may also include stylistic changes, such as corrections for clarity and readability, grammar, punctuation, references, codification, and overall improvement of the text of the regulation.

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

Filed: April 10, 2020 9:16am

Document No. 4963
CLEMSON UNIVERSITY
CHAPTER 27
Statutory Authority: 1976 Code Section 46-13-30

27-1093. Temporary Extension of All Certified Applicator Licenses.

Emergency Situation:

Executive Orders issued by the SC Governor's office related to management of the emergency COVID-19 crisis requires social distancing of 3 or less persons and also closes state offices and prevents non-essential state employees from operating their work on their job sites. Many pesticide applicators rely upon the in-person trainings and testing opportunities traditionally provided by Clemson personnel in their local County Extension offices and those are no longer being offered, which jeopardizes their ability to renew their pesticide license in a timely manner and would result in their inability to purchase and handle certain restricted use pesticides for on farm and/or commercial uses. Without action, farmers, pest control operators and others who use pesticides for professional purposes would be unable to safely and legally operate their businesses.

Text:

27-1093. Temporary Extension of All Certified Applicator Licenses.

To ensure that certified applicators continue to meet the requirements of changing technology and to ensure a continuing level of competence and ability to use pesticides safely and properly, pesticide applicators licensed as of December 31, 2019 shall be have their license extended through December 31, 2020, if they meet the following requirements:

1. Have not already renewed as of April 1, 2020;
2. Complete a DPR approved online training program (2 hours min);
3. Pay the annual licensing fee as required by law;
4. Subject to a pesticide applicator inspection at a later date.

Statement of Need and Reasonableness:

DESCRIPTION OF REGULATION: 27-1093. Temporary Extension of All Certified Applicator Licenses.

Purpose: The proposed regulations will extend all certified pesticide applicators licenses through December 31, 2020 without the requirement of reexamination.

Legal Authority: S.C. Code Ann. Section 46-13-30.

Plan for Implementation: All Commercial, Non-Commercial, and Private applicators that were licensed as of December 31, 2019 will be able to renew during 2020 regardless of their recertification status.

All applicable fees must be paid for renewal.

Private applicators renewing on or after April 1, 2020 with less than 5 CEUs will only receive a license for 1 year. The applicable fee for that license will be $2. They will be required to retake the Private Applicator training (when available) to receive a license beyond 2020.

Private applicators renewing on or after April 1, 2020 with the required 5 CEUs will receive a license for the block (2024). The applicable fee for that license will be $12.50.

Commercial applicators renewing on or after April 1, 2020 will receive a license and be eligible to renew for 2021.

A 2-hour CEU course must be taken within 90 days of the license issuance.

Online recertification courses can be found here: http://regfocus.clemson.edu/dpr/recert.htm - Option 2 is online courses.

Applicators may be subject to an inspection. During this inspection if it is determined the applicator did not obtain the requisite 2-hour CEU course, their license may be suspended or revoked.

No new license will be issued until in-person testing is approved or on-line testing centers are open.

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

Farmers and certain commercial pesticide applicators need to have a current applicator license in order to be able to legally purchase and apply certain restricted use pesticides. Restricted pesticides cannot be legally sold to unlicensed farmers and commercial pesticide applicators. In addition, operating a commercial pest control business without a current pesticide license is a state and federal violation. License renewals and applications require in person training and testing which is currently not an option given the emergency health guidance being set forth in response to COVID-19. It is reasonable to extend the licenses of current licensed applicators through December 31, 2020 in order to allow certified pesticide applicators to continue to have access to pesticide products that may be used for farming, pest control, and/or other essential uses to further allow the management and control of certain pests.

DETERMINATION OF COSTS AND BENEFITS:

There are no additional costs to the Clemson University Department of Pesticide Regulation (DPR).

UNCERTAINTIES OF ESTIMATES:

None.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:

None, pesticide regulations on storage, personal protective equipment, mixing, use and other pesticide laws will continue to be enforced without disruption.

Clemson DPR will continue to support and follow public health guidance and requirements as set forth by certain both State and Federal authorities.

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

Without implementation of the proposed regulations, South Carolina would see a shortage of the number of certified pesticide applicators in the fields of agriculture, household pest control, public health pest control and related areas. As spring continues, these applicators become more important as we will see a rise in pesticide use for farming, termite and mosquito control. Without these licenses, South Carolina could see a rise in public health pest issues and farmers will not have access to tools to help avoid insect pest and disease problems on their crops.

Statement of Rationale:

Given the current COVID-19 health crisis and SC Executive Orders by Governor McMaster calling for social distancing and closing of offices of state officials excepting for non-essential personnel, this presents a challenge for the administration of certain licensing renewals for current pesticide applicators, which have traditionally been offered in-person testing. These emergency regulations, as presented are intended to address these in-person testing and renewal practices by temporarily extending certain licenses as valid through December 31, 2020

without reexamination, thereby providing regulatory relief for private and commercial applicators to have their licenses temporarily renewed during the COVID-19 crisis.

Filed: March 20, 2020 11:12 am

Document No. 4962
STATE BOARD OF EDUCATION
CHAPTER 43
Statutory Authority: 1976 Code Sections 1-23-130, 59-5-60, 59-5-65, and 59-5-120

43-40. COVID-19 Waiver and Suspension of Provisions.

Emergency Situation:

On March 13, 2020, Governor Henry McMaster issued Executive Order 2020-08, declaring a State of Emergency based on a determination that the 2019 Novel Coronavirus ("COVID-19") poses an actual or imminent public health emergency for the State of South Carolina. Also, on March 13, 2020, the President of the United States declared that the COVID-19 outbreak in the United States constitutes a national emergency, which began on March 1, 2020.

Furthermore, on March 15, 2020, Governor McMaster issued Executive Order 2020-09, directing the closure of all public schools in the State of South Carolina for students and non-essential employees beginning March 16, 2020, through Tuesday, March 31, 2020. Additionally, Executive Order 2020-10 was issued on March 17, 2020, authorizing and directing any agency within the Executive Branch, such as the Department of Education, to waive or "suspend provisions of existing regulations prescribing procedures for conduct of state business if strict compliance with the provisions thereof would in any way prevent, hinder, or delay necessary action in coping with the emergency," in accordance with section 25-1-440 of the South Carolina Code of Laws and other applicable law.

The State Board of Education promulgates this emergency regulation to enable the State Superintendent of Education to exercise necessary discretion in waiving or suspending any provisions of Chapter 43 of the South Carolina Code of Regulations that may be impacted or affected by the COVID-19 State of Emergency in the State of South Carolina.

Text:

43-40. COVID-19 Waiver and Suspension of Provisions.

In accordance and compliance with Executive Order 2020-08 and any applicable subsequent Executive Orders, and due to the COVID-19 Public Health Emergency, the State Board of Education permits the State Superintendent of Education the authority to waive or suspend any applicable provisions of Chapter 43 of the South Carolina Code of Regulations that may be impacted or affected by a State of Emergency related to COVID-19. Any action the Superintendent deems reasonable and necessary to take shall be reported to the State Board of Education.

Statement of Need and Reasonableness:

DESCRIPTION OF REGULATION:

Purpose: Allow the State Superintendent of Education to use necessary discretion to waive or suspend any applicable provisions of Chapter 43 of the South Carolina Code of Regulations that may be impacted or affected by the COVID-19 public health emergency and State of Emergency in the State of South Carolina.

Legal Authority: 1976 Code Sections 1-23-130, 59-5-60, 59-5-65, and 59-5-120.

Plan for Implementation: This emergency regulation will be directly enforceable upon filing with the Legislative Council.

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

This emergency regulation enables the State Board of Education to grant authority to the State Superintendent of Education to use necessary discretion to waive or suspend any applicable provisions of Chapter 43 of the South Carolina Code of Regulations that may be impacted or affected by the COVID-19 public health emergency and State of Emergency in the State of South Carolina.

DETERMINATION OF COSTS AND BENEFITS:

There are no costs associated with this emergency regulation.

UNCERTAINTIES OF ESTIMATES:

Minimal.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:

The public's mental and physical health will be enhanced by full implementation of this emergency regulation.

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

Due to the unknown impacts and stressful situation the public currently finds itself in, the public's health will be negatively impacted if this emergency regulation is not implemented.

Document No. 4861
STATE FISCAL ACCOUNTABILITY AUTHORITY
CHAPTER 19
Statutory Authority: 1976 Code Sections 11-35-10 et seq.

19-445. Consolidated Procurement Code.

Synopsis:

The Consolidated Procurement Code authorizes the State Fiscal Accountability Authority to promulgate regulations governing the procurement, management, and control of any and all supplies, services, information technology, and construction to be procured by the State and any other regulations relating to implementation of Title 11, Chapter 35 (Sections 11-35-60 & -540(1)). The proposed regulation is necessary to address various matters regarding Regulation 19-445 and procurement in general. Notice of Drafting for the proposed amendments was published in the *State Register* on September 28, 2018.

Instructions:

Print the following sections of Regulation 19-445 as provided below. All other items and sections remain unchanged.

Text:

19-445. Consolidated Procurement Code.

(Statutory Authority: 1976 Code Section 11-35-10 et seq.)

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19-445.2000. State Procurement Regulations.

A. General.

These Regulations issued by the South Carolina State Fiscal Accountability Authority, hereafter referred to as the board, establish policies, procedures, and guidelines relating to the procurement, management, control, and disposal of supplies, services, information technology, and construction, as applicable, under the authority of the South Carolina Consolidated Procurement Code, as amended. These Regulations are designed to achieve maximum practicable uniformity in purchasing throughout state government. Hence, implementation of the Procurement Code by and within governmental bodies, as defined in Section 11-35-310(18) of the Procurement Code, shall be consistent with these Regulations. Nothing contained in these Rules and Regulations shall be construed to waive any rights, remedies or defenses the State might have under any laws of the State of South Carolina.

B. Organizational Authority.

(1) The Chief Procurement Officers acting on behalf of the board shall have the responsibility to audit and monitor the implementation of these Regulations and requirements of the South Carolina Consolidated Procurement Code. In accordance with Section 11-35-510 of the Code, all rights, powers, duties and authority relating to the procurement of supplies, services, and information technology and to the management, control, warehousing, sale and disposal of supplies, construction, information technology, and services now vested in or exercised by any governmental body under the provisions of law relating thereto, and regardless of source funding, are hereby vested in the appropriate chief procurement officers. The chief procurement officers shall be responsible for developing such organizational structure as necessary to implement the provisions of the Procurement Code and these Regulations.

(2) Materials Management Office: The Materials Management Officer is specifically responsible for:

(a) developing a system of training and certification for procurement officers of governmental bodies in accordance with Section 11-35-1030;

(b) recommending differential dollar limits for direct procurements on the basis of but not limited to the following:

(1) procurement expertise,

(2) commodity,

(3) service,

(4) dollar;

(c) performing procurement audits of governmental bodies in accordance with Sections 11-35-70 and 11-35-1230 of the Procurement Code.

(d) overseeing acquisitions for the State by the State Procurement Office.

(e) coordinating with the Information Technology Management Office in accordance with Section 11-35-820;

(f) overseeing the acquisition of procurements by the State Engineer in accordance with Section 11-35-830.

(3) Office of Information Technology Management: The Office of Information Technology Management shall be responsible for all procurements involving information technology pursuant to Section 11-35-820 of the Procurement Code.

(4) Office of State Engineer: The Office of State Engineer under the direction and oversight of the Materials Management Officer shall be responsible for all procurements involving construction, architectural and engineering, construction management, and land surveying services pursuant to Section 11-35-830 of the Procurement Code.

C. Definitions

(1) "Head of purchasing agency" means the agency head, that is, the individual charged with ultimate responsibility for the administration and operations of the governmental body. Whenever the South Carolina Consolidated Procurement Code or these Regulations authorize either the chief procurement officer or the head of the purchasing agency to act, the head of the purchasing agency is authorized to act only within the limits of the governmental body's authority under Section 11-35-1550(1) or its certification as granted by Board under Section 11-35-1210(1), except with regard to acts taken pursuant to Section 11-35-1560 and 11-35-1570.

(2) "Procuring Agency" means "purchasing agency" as defined in Section 11-35-310.

(3) "Certification" means the authority delegated by the board to a governmental body to make direct procurements not under term contracts. Certification is granted pursuant to Section 11-35-1210 and R.19-445.2020. Subject to Section 11-35-1240(B), Section 11-35-1550 also authorizes governmental bodies to make direct procurements.

(4) "Responsible procurement officer" means the employee, either of the purchasing agency or the chief procurement officers, as applicable, assigned to serve as the procurement officer, as defined in Section 11-35-310, responsible for administering the procurement process. Typically, the responsible procurement officer will be identified by name in the solicitation, as amended, and any subsequent contracts, as amended.

D. Duty to Report Violations

All governmental bodies shall comply in good faith with all applicable requirements of the consolidated procurement code and these procurement regulations. When any information or allegations concerning improper or illegal conduct regarding a procurement governed by the consolidated procurement code comes to the attention of any employee of the State, immediate notice of the relevant facts shall be transmitted to the appropriate chief procurement officer.

E. Effective Date.

Except as otherwise provided herein, these regulations are effective upon publication in the State Register. The following additions or revisions to this regulation 19-445 apply only to solicitations issued after the first Monday in September following the legislative session during which they are approved: Sections 2010, -.2015, -.2050, -.2095, -.2097, -.2105, -.2120, -.2180.

19-445.2015. Unauthorized or Illegal Procurements.

A. Decision to Ratify or Declare Void

(1) Upon discovering after award either (a) that a person lacking actual authority has made an unauthorized award or modification of a contract or (b) that a contract award or modification is otherwise in violation of the

Consolidated Procurement Code or these regulations, the appropriate official, as defined in section G below, must decide to either ratify the contract in accordance with this regulation or acknowledge and declare the contract null and void. If ratified, the contract may be continued or terminated. The contract may be ratified only if ratification is in the interest of the State.

(2) The factors pertinent in determining the State's interest include, but are not limited to: (a) the seriousness of the procurement deficiency; (b) the degree of prejudice to the integrity of the competitive procurement system; (c) the good faith of the public officials and contractors involved; (d) the extent of performance; (e) the costs to the State in either terminating the contract or declaring it null and void, if any; (f) the urgency of the acquisition; and (g) the impact on the using agency's mission.

B. Decision to Continue or Terminate Contract. If a contract is ratified, the appropriate official must decide to either (1) continue the contract, or (2) terminate the contract and proceed as provided in section C below. A contract award or modification that is in violation of the Consolidated Procurement Code or these regulations may be continued only if the appropriate official determines an urgent and compelling need exists that cannot otherwise be met without undue burden on the State. If no such urgent and compelling need exists, the ratified contract must be terminated and the State shall proceed as provided in section C below. A contract that was ratified solely because a person lacking actual authority made an unauthorized award or modification, as described in item A(1)(a) above, does not require an urgent and compelling need to support its continuation.

C. Settlement of Terminated Contracts. If a contract is terminated as allowed by this regulation, the State shall, as appropriate and by agreement with the supplier, return any supplies delivered for a refund at no cost to the State or at a minimal restocking charge. If a contract is terminated and a termination claim is made, settlement shall be made in accordance with the contract. If there are no applicable termination provisions in the contract, settlement shall be made on the basis of actual costs directly or indirectly allocable to the contract through the time of termination. Such costs shall be established in accordance with generally accepted accounting principles. Profit shall be proportionate only to the performance completed up to the time of termination and shall be based on projected gain or loss on the contract as though performance were completed. Anticipated profits are not allowed.

D. Settlement of Void Contracts. If a contract is acknowledged as null and void pursuant to section A above, the State shall endeavor to return those supplies delivered under the contract that have not been used or distributed, and no further payments shall be made under the contract. In addition, the State is entitled to recover the greater of (1) the difference between payments made under the contract and the contractor's actual costs up until the contract was declared null and void, or (2) the difference between payments under the contract and the value to the State of the supplies, services, information technology, or construction it obtained under the contract.

E. Bad Faith. Notwithstanding section D above, the State is entitled to recover all amounts paid if the appropriate official determines that the recipient of the contract acted in bad faith. Bad faith shall not be assumed. Without limitation, specific findings showing deception, dishonesty, reckless disregard of clearly applicable laws or regulations, or deliberate breach of contract scope limits, support a finding of bad faith.

F. State's Remedies Not Limited. Regardless of its ratification of a contract, the State shall be entitled to any damages it can prove under any theory including but not limited to contract and tort.

G. Appropriate Official. The appropriate official to make the decisions authorized by sections A, B, and E above, or the determination addressed in item H(2) below, is the chief procurement officer, the head of a purchasing agency, or, for a contract with a total potential value no greater than $100,000, a designee of either officer, above the level of the person responsible for the person committing or authorizing the act. If a contract award or modification is made in violation of the Consolidated Procurement Code or these regulations, and the value of the contract exceeds the certification of the purchasing agency or one hundred thousand dollars, the chief procurement officer must concur in the written determination before any further action is taken, unless the contract is declared null and void. In all circumstances, the chief procurement officer must concur in any determination finding bad faith.

H. Determinations.

(1) All decisions authorized by sections A, B, and E above shall be supported by a written determination of appropriateness conforming to the requirements of Section 11-35-210.

(2) The written determination must include the facts and circumstances surrounding the improper act, what corrective action is being taken to prevent recurrence, and the action taken against the individual committing the act.

(3) In most circumstances, the decisions authorized by sections A, B, and E above are unnecessary for a contract that has been completely performed. Accordingly, the determination in those instances maybe limited to the information required by subsection H(2).

I. Reporting. Every quarter, each governmental body shall submit to the Materials Management Officer a record listing all contract awards or modifications discovered as described in item A(1) above, along with copies of the applicable written determinations. The Materials Management Officer shall submit a copy of the record to the board on an annual basis and such record shall be available for public inspection.

J. Miscellaneous.

(1) In the context of an administrative review conducted under Article 17, sections G, H, and I above are inapplicable, and the appropriate official to make the decision authorized by sections A, B, and E is the chief procurement officer or Procurement Review Panel, as applicable.

(2) This Regulation does not apply to a determination pursuant to R.19-445.2085C.

19-445.2017. Pre-solicitation Procedures.

A. General.

(1) This regulation prescribes best practices for pre-solicitation activities in acquisitions of supplies, services, or information technology, including acquisition planning, market research, and exchanges with industry. Nothing in section A, B, or C of this regulation shall provide an independent basis for administrative review pursuant to Article 17.

(2) Using agencies shall perform acquisition planning and conduct market research for all acquisitions of supplies, services, or information technology. The extent of planning and research will vary, depending on such factors as estimated dollar value, complexity, and past experience, as well as the nature of the supplies, services or information technology to be acquired.

(3) Except for procurements conducted pursuant to Section 11-35-1550, no solicitation for offers shall proceed until the using agency has certified in writing that it has complied with this regulation. If the using agency lacks authority to conduct the procurement, the using agency shall provide the responsible procurement officer the opportunity to fully participate in all aspects of any pre-solicitation activities conducted by the using agency.

(4) The using agency must document its acquisition planning and market research in sufficient detail to satisfy the requirements of an audit. This documentation shall be made a part of the procurement file.

(5) The appropriate chief procurement officer or his designee may require the using agency to conduct additional market research or provide additional documentation of the using agency's planning and research activities.

(6) The chief procurement officers shall provide guidance which shall be followed by all agencies conducting acquisition planning and market research, including considerations pertinent to determining the adequacy of planning and research activities.

B. Acquisition Planning.

(1) The purpose of acquisition planning is to ensure that the using agency meets its needs in the most effective, economical, and timely manner. The planning should promote and provide for:

(a) Clearly defining the agency's needs;

(b) Acquisition of commercially available items to the maximum extent practicable;

(c) Full and open competition to the maximum extent practicable, with due regard to the nature of the supplies, services, or information technology to be acquired;

(d) Selection of appropriate source selection method and contract type; and

(e) Appropriate consideration of the use of term contracts to fulfill the requirement, before awarding new contracts.

(2) Acquisition planning should begin as soon as the agency need is identified, preferably well in advance of when contract award or order placement is necessary. Agency staff should avoid issuing requirements on an urgent basis or with unrealistic delivery or performance schedules, since it generally impedes advantageous outcomes, restricts competition, and increases prices.

(3) Acquisition planning shall integrate the efforts of all personnel responsible for significant aspects of the acquisition. If and as commensurate with the value and complexity of the acquisition, the agency shall form a team consisting of all those who will be responsible for significant aspects of the acquisition, such as

procurement, fiscal, legal, and technical personnel. If contract performance is to be in a designated operational area, the agency should also consider including operations staff or "end users," as appropriate.

C. Market Research.

(1) Acquisitions begin with a description of the agency's needs stated in terms sufficient to allow conduct of market research. Using agencies shall conduct market research appropriate to the circumstances to arrive at the most suitable approach to acquiring supplies, services, and information technology. Agencies should conduct market research when planning a new acquisition, or for a new type of supplies, services, or information technology; before requisitioning an acquisition, or requesting delegated authority to conduct an acquisition in excess of the agency's certification; and on an ongoing basis (to the maximum extent practicable), to effectively identify the capabilities of small businesses, new entrants into government contracting, and new commercially available items, for meeting the agency's requirements.

(2) Agencies should use the results of market research to determine if sources capable of satisfying the agency's requirements exist; determine if commercially available items exist that meet the agency's requirements; and determine the practices of firms engaged in producing, distributing, and supporting the supplies, services or information technology to be acquired, such as type of contract, type and relationship of businesses involved in such contracts (e.g., subcontractors, suppliers, distributors, integrators) and, common industry contract terms or specifications, including without limitation, terms for contract duration, payment, warranties, maintenance and packaging, marking, and any other contract terms relevant to the proposed acquisition..

D. Exchanges with industry before receipt of proposals.

(1) Exchanges of information among all interested parties, from the earliest identification of a requirement through receipt of proposals, are encouraged. Any exchange of information must be consistent with Regulation 19-445.2010, Disclosure of Procurement Information. Interested parties include potential offerors, end users, agency acquisition and supporting personnel, and others involved in the conduct or outcome of the acquisition. The purpose of exchanging information is to improve the understanding of agency requirements and industry capabilities, thereby allowing potential offerors to judge whether or how they can satisfy the State's requirements, and enhancing the State's ability to obtain quality supplies, services, information technology, and construction, at reasonable prices, and increase efficiency in proposal preparation, proposal evaluation, negotiation, and contract award.

(2) Agencies are encouraged to promote early exchanges of information about future acquisitions. An early exchange of information among industry and the program manager, responsible procurement officer, and other participants in the acquisition process can identify and resolve concerns regarding the acquisition strategy, including proposed contract type, terms and conditions, and acquisition planning schedules; the feasibility of the requirement, including performance requirements, statements of work, and data requirements; the suitability of the proposal instructions and evaluation criteria; the availability of reference documents; and any other industry concerns or questions.

(3) Techniques to promote early exchanges of information include industry conferences; public hearings; market research, as described in section C above; presolicitation notices; draft RFPs; requests for information (RFIs); presolicitation conferences; and site visits. They may also include one-on-one meetings with potential offerors. In conducting exchanges, agencies should take measures to comply with Chapter 13, Title 8 of the South Carolina Code (Ethics, Government Accountability and Campaign Reform Act); R.19-445.2010 (Disclosure of Procurement Information); R.19-445.2127 (Organizational Conflicts of Interest); and R.19-445.2165 (Gifts). However, any such meetings that are substantially involved with potential specifications or contract terms and conditions must comply with the restrictions on disclosure of information in subsection D(6) below.

(4) To encourage industry response, a using agency may publish notice of its plans to conduct pre-solicitation exchanges in South Carolina Business Opportunities and other publications likely to reach potential offerors.

(5) RFIs may be used when the agency does not presently intend to award a contract, but wants to obtain price, delivery, other market information, or capabilities for planning purposes. Responses to these notices are not offers and cannot be accepted by the agency to form a binding contract. There is no required format for RFIs.

(6) General information about agency mission needs and future requirements may be disclosed at any time. In addition to the controls in R.19-445.2010, the responsible procurement officer must control any exchange with potential offerors after release of the solicitation. When specific information about a proposed acquisition

that would be necessary or advantageous for the preparation of proposals is disclosed to one or more potential offerors, that information must be made available to the public as soon as practicable, but no later than the next general release of information, in order to avoid creating an unfair competitive advantage. When conducting a presolicitation conference, materials distributed at the conference should be made available to all potential offerors, upon request.

19-445.2020. Certification.

A. Review Procedures.

(1) Unless otherwise authorized by statute, any governmental body that desires to make direct agency procurements in excess of $50,000.00, shall contact the Materials Management Officer in writing to request certification in any area of procurement, including the following four areas:

(a) Supplies and services;

(b) Consultant services;

(c) Construction and related professional services;

(d) Information technology.

(2) The Materials Management Officer shall review and report on the particular governmental body's entire internal procurement operation to include, but not be limited to the following:

(a) Adherence to provisions of the South Carolina Consolidated Procurement Code and these Regulations;

(b) Procurement staff and training;

(c) Adequate audit trails and purchase order register;

(d) Evidences of competition;

(e) Small purchase provisions and purchase order confirmation;

(f) Emergency and sole source procurements;

(g) Source selections;

(h) File documentation of procurements;

(i) Decisions and determinations made pursuant to section 2015;

(j) Adherence to any mandatory policies, procedures, or guidelines established by the appropriate chief procurement officers;

(k) Adequacy of written determinations required by the South Carolina Consolidated Procurement Code and these Regulations;

(l) Contract administration;

(m) Adequacy of the governmental body's system of internal controls in order to ensure compliance with applicable requirements.

(3) The report required by item (2) shall be submitted to the board, along with the recommendation of the Materials Management Officer. Upon favorable review by the Materials Management Officer and approval by the board, the particular governmental body may be certified and assigned a dollar limit below which the certified governmental body may make direct agency procurements. Such certification shall be in writing and specify:

(a) The name of the governmental body;

(b) Any conditions, limits or restrictions on the exercise of the certification;

(c) The duration of the certification; and

(d) The procurement areas in which the governmental body is certified.

(4) Using the criteria listed in item A(2) above, the office of each chief procurement officer shall be reviewed at least every five years by the audit team of the Materials Management Office. The results of the audit shall be provided to the appropriate chief procurement officer and the Executive Director of the Authority.

B. Limitations.

(1) Such certification as prescribed in subsection A shall be subject to any term contracts established by the chief procurement officers which requires mandatory procurement by all governmental bodies.

(2) Such certification as prescribed in subsection A may be subject to maintaining an adequate staff of qualified or certified procurement officers.

19-445.2027. Electronic Commerce.

A. "Electronic commerce" means electronic techniques for accomplishing business transactions including electronic mail or messaging, World Wide Web technology, electronic bulletin boards, purchase cards, electronic funds transfer, and electronic data interchange.

B. General.

(1) The State may use electronic commerce whenever practicable or cost-effective. The use of terms commonly associated with paper transactions (e.g., "copy," "document," "page," "printed," "sealed envelope," and "stamped") shall not be interpreted to restrict the use of electronic commerce. The responsible procurement officer may supplement electronic transactions by using other media to meet the requirements of any contract action governed by the Consolidated Procurement Code (e.g., transmit hard copy of drawings).

(2) Agencies may exercise broad discretion in selecting the information technology that will be used in conducting electronic commerce. However, the head of each agency shall ensure that systems, technologies, procedures, and processes used by the agency to conduct electronic commerce—

(a) Are implemented uniformly throughout the agency, to the maximum extent practicable;

(b) Are implemented only after considering the full or partial use of existing infrastructures;

(c) Facilitate access to State acquisition opportunities by as many persons as practicable, including small businesses, minority business enterprises, and socially and economically disadvantaged small businesses;

(d) Include a means of providing widespread public notice of acquisition opportunities and a means of responding to notices or solicitations electronically;

(e) Comply with applicable standards that broaden interoperability and ease the electronic interchange of information; and

(f) Are capable of ensuring authentication and confidentiality commensurate with the risk and magnitude of the harm from loss, misuse, or unauthorized access to or modification of the information.

(3) Agencies using the procurement functionality of the South Carolina Enterprise Information System are deemed to have complied with subsection (B)(2) of this regulation.

(4) Consistent with provisions of the Uniform Electronic Transactions Act, Sections 26-6-10, et seq., agencies may accept electronic signatures and records in connection with State contracts.

C. Submission of Offers by Electronic Commerce. Subject to all other applicable regulations (e.g., R.19-445.2045 and -2050), the responsible procurement officer may authorize use of electronic commerce for submission of bids and proposals. If electronic submissions are authorized, the solicitation shall specify the electronic commerce method(s) that offerors may use. Offers submitted by electronic commerce shall be considered only if the electronic commerce method was specifically stipulated or permitted by the solicitation.

19-445.2030. Competitive Sealed Bidding—The Invitation for Bids.

A. The invitation for bids shall be used to initiate a competitive sealed bid procurement and shall include the following, as applicable:

(1) instructions and information to bidders concerning the bid submission requirements, including the time and date set for receipt of bids, the individual to whom the bid is to be submitted, the address of the office to which bids are to be delivered, the maximum time for bid acceptance by the State, and any other special information;

(2) the purchase description, evaluation factors, delivery or performance schedule, and such inspection and acceptance requirements as are not included in the purchase description;

(3) the contract terms and conditions, including warranty and bonding or other security requirements, as applicable; and

(4) Instructions to bidders on how to visibly mark information which they consider to be exempt from public disclosure.

B. Adequate notice of the invitation for bids must be given at a reasonable time before the date set forth in it for the opening of bids. Accordingly, bidding time will be set to provide bidders a reasonable time to prepare their bids. Without limiting the foregoing requirements, the date of opening may not be less than seven (7) days after notice of the solicitation is provided as required by Section 11-35-1520(3), unless a shorter time is deemed necessary for a particular procurement as determined in writing by the Chief Procurement Officer or the head of the purchasing agency or his designee.

19-445.2040. The Official State Government Publication.
The name of the official state government publication shall be known as the "South Carolina Business Opportunities." It shall be published by the Materials Management Office at least weekly. The purpose is to provide a listing of proposed procurements of construction, information technology, supplies, services and other procurement information of interest to the business community. Except as otherwise provided by law, the publication will be available to all interested parties by posting on a public-facing Internet site. Contents shall be limited to inclusion of proposed procurements required by regulations and such other business information as approved by the Materials Management Officer. Publication of proposed procurements of a classified nature or emergencies may be excluded from publication.

19-445.2045. Receipt, Safeguarding, and Disposition of Bids.
A. Procedures Prior to Bid Opening.
All bids (including modifications) received prior to the time of opening shall be kept secure and, except as provided in subsection B below, unopened. Necessary precautions shall be taken to insure the security of the bid. Prior to bid opening, information concerning the identity and number of bids received shall be made available only to the state employees, and then only on a "need to know" basis. When bid samples are submitted, they shall be handled with sufficient care to prevent disclosure of characteristics before bid opening.
B. Unidentified Bids.
Unidentified bids may be opened solely for the purpose of identification, and then only by an official specifically designated for this purpose by the Chief Procurement Officer, the procurement officer of the governmental body, or a designee of either officer. If a sealed bid is opened by mistake, the person who opens the bid will immediately write his signature and position on the envelope and deliver it to the aforesaid official. This official shall immediately write on the envelope an explanation of the opening, the date and time opened, the invitation for bids' number, and his signature, and then shall immediately reseal the envelope.
C. When bids or proposals are rejected, or a solicitation cancelled after bids or proposals are received, the bids or proposals which have been opened shall be retained in the procurement file, or if unopened, returned to the bidders or offerors upon request, or otherwise disposed of. Unopened bids or proposals are not considered to be public information under Chapter 4 of Title 30 (Freedom of Information Act).

19-445.2060. Repealed.

19-445.2065. Rejection of Bids.
A. Unless there is a compelling reason to reject one or more bids, award will be made to the lowest responsible and responsive bidder. Every effort shall be made to anticipate changes in a requirement prior to the date of opening and to notify all prospective bidders of any resulting modification or cancellation, thereby permitting bidders to change their bids and preventing the unnecessary exposure of bid prices. As a general rule after opening, an invitation for bids should not be canceled and readvertised due solely to increased quantities of the items being procured; award should be made on the initial invitation for bids and the additional quantity required should be treated as a new procurement.
B. Cancellation of Bids Prior to Award.
(1) When it is determined prior to the issuance of an award or notification of intent to award, whichever is earlier, but after opening, that the requirements relating to the availability and identification of specifications have not been met, the invitation for bids shall be cancelled. Invitations for bids may be cancelled after opening, but prior to award, when such action is consistent with subsection A above and the procurement officer determines in writing that:
(a) inadequate or ambiguous specifications were cited in the invitation;
(b) specifications have been revised;
(c) the supplies, services, information technology, or construction being procured are no longer required;
(d) the invitation did not provide for consideration of all factors of cost to the State, such as cost of transporting state furnished property to bidders' plants;
(e) bids received indicate that the needs of the State can be satisfied by a less expensive article differing from that on which the bids were invited;
(f) all otherwise acceptable bids received are at unreasonable prices;

(g) the bids were not independently arrived at in open competition, were collusive, or were submitted in bad faith; or

(h) for other reasons, cancellation is clearly in the best interest of the State.

(2) Determinations to cancel invitations for bids shall state the reasons therefor.

C. Extension of Bid Acceptance Period.

Should administrative difficulties be encountered after bid opening which may delay award beyond bidders' acceptance periods, the several lowest bidders should be requested, before expiration of their bids, to extend the bid acceptance period (with consent of sureties, if any) in order to avoid the need for re-advertisement.

19-445.2070. Rejection of Individual Bids.

A. General Application.

Any bid which fails to conform to the essential requirements of the invitation for bids shall be rejected.

B. Alternate Bids.

Any bid which does not conform to the specifications contained or referenced in the invitation for bids may be rejected unless the invitation authorized the submission of alternate bids and the supplies offered as alternates meet the requirements specified in the invitation.

C. Any bid which fails to conform to the delivery schedule, to permissible alternates thereto stated in the invitation for bids, or to other material requirements of the solicitation may be rejected as nonresponsive.

D. Modification of Requirements by Bidder.

(1) Ordinarily a bid should be rejected when the bidder attempts to impose conditions which would modify requirements of the invitation for bids or limit his liability to the State, since to allow the bidder to impose such conditions would be prejudicial to other bidders. For example, bids should be rejected in which the bidder:

(a) attempts to protect himself against future changes in conditions, such as increased costs, if total possible cost to the State cannot be determined;

(b) fails to state a price and in lieu thereof states that price shall be "price in effect at time of delivery;"

(c) states a price but qualified such price as being subject to "price in effect at time of delivery;"

(d) when not authorized by the invitation, conditions or qualifies his bid by stipulating that his bid is to be considered only if, prior to date of award, bidder receives (or does not receive) award under a separate procurement;

(e) requires the State to determine that the bidder's product meets state specifications; or

(f) limits the rights of the State under any contract clause.

(2) Bidders may be requested to delete objectionable conditions from their bid provided that these conditions do not go to the substance, as distinguished from the form, of the bid or work an injustice on other bidders. Bidder should be permitted the opportunity to furnish other information called for by the Invitation for Bids and not supplied due to oversight, so long as it does not affect responsiveness.

E. Price Unreasonableness.

Any bid may be rejected if the responsible procurement officer determines in writing that it is unreasonable as to price.

F. Bid Security Requirement.

When a bid security is required and a bidder fails to furnish it in accordance with the requirements of the invitation for bids, the bid shall be rejected.

G. Exceptions to Rejection Procedures.

Any bid received after the procurement officer of the governmental body or his designee has declared that the time set for bid opening has arrived, shall be rejected unless the bid had been delivered to the location specified in the solicitation or the governmental bodies' mail room which services that location prior to the bid opening.

19-445.2085. Correction or Withdrawal of Bids; Cancellation of Awards.

A. General Procedure.

(1) A bidder or offeror must submit in writing a request to either correct or withdraw a bid to the procurement officer. Each written request must document the fact that the bidder's or offeror's mistake is clearly an error that will cause him substantial loss. All decisions to permit the correction or withdrawal of bids shall be supported by a written determination of appropriateness made by the chief procurement officers or head of a purchasing agency, or the designee of either.

(2) Confirmation of Bid. When the responsible procurement officer knows or has reason to conclude that a mistake may have been made, she should request the bidder to confirm the bid. Situations in which confirmation should be requested include obvious, apparent errors on the face of the bid or a bid unreasonably lower than the other bids submitted. Consistent with R.19-445.2010, -2050C, and -2095C, the responsible procurement officer should only disclose information that is publicly available when confirming a bid. If the bidder asserts a mistake, the bid may be corrected or withdrawn only if allowed by regulation (e.g., R.19-445.2085A and B and R.19-445.2095I(2)(d)).

B. Correction Creates Low Bid.

To maintain the integrity of the competitive sealed bidding system, a bidder shall not be permitted to correct a bid mistake after bid opening that would cause such bidder to have the low bid unless the mistake is clearly evident from examining the bid document; for example, extension of unit prices or errors in addition.

C. Cancellation Of Award Prior To Performance.

After an award or notification of intent to award, whichever is earlier, has been issued but before performance has begun, the award or contract may be canceled and either re-awarded or a new solicitation issued or the existing solicitation canceled, if the Chief Procurement Officer determines in writing that:

(1) Inadequate or ambiguous specifications were cited in the invitation;

(2) Specifications have been revised;

(3) The supplies, services, information technology, or construction being procured are no longer required;

(4) The invitation did not provide for consideration of all factors of cost to the State, such as cost of transporting state furnished property to bidders' plants;

(5) Bids received indicate that the needs of the State can be satisfied by a less expensive article differing from that on which the bids were invited;

(6) The bids were not independently arrived at in open competition, were collusive, or were submitted in bad faith;

(7) Administrative error of the purchasing agency discovered prior to performance, or

(8) For other reasons, cancellation is clearly in the best interest of the State.

19-445.2095. Competitive Sealed Proposals.

A. Request for Proposals.

The provisions of Regulations 19-445.2030(B) and 19-445.2040 shall apply to implement the requirements of Section 11-35-1530 (2), Public Notice.

B. Receipt, Safeguarding, and Disposition of Proposals.

The provisions of Regulation 19-445.2045 shall apply to competitive sealed proposals.

C. Receipt of Proposals.

The provisions of Regulation 19-445.2050(B) shall apply to competitive sealed proposals. For the purposes of implementing Section 11-35-1530(3), Receipt of Proposals, the following requirements shall be followed:

(1) Proposals shall be opened publicly by the procurement officer or his designee in the presence of one or more witnesses at the time and place designated in the request for proposals. Proposals and modifications shall be time-stamped upon receipt and held in a secure place until the established due date. After the date established for receipt of proposals, a Register of Proposals shall be prepared which shall include for all proposals the name of each offeror, the number of modifications received, if any, and a description sufficient to identify the item offered. The Register of Proposals shall be certified in writing as true and accurate by both the person opening the proposals and the witness. The Register of Proposals shall be open to public inspection only after the issuance of an award or notification of intent to award, whichever is earlier. Proposals and modifications shall be shown only to State personnel having a legitimate interest in them and then only on a "need to know" basis. Contents and the identity of competing offers shall not be disclosed during the process of opening by state personnel.

(2) As provided by the solicitation, offerors must visibly mark all information in their proposals that they consider to be exempt from public disclosure.

D. [Repealed]

E. Clarifications and Minor Informalities in Proposals.

The provisions of Sections 11-35-1520(8) and 11-35-1520(13) shall apply to competitive sealed proposals.

F. Specified Types of Construction.

Consistent with Section 48-52-670, which allows the use of competitive sealed proposals, it is generally not practicable or advantageous to the State to procure guaranteed energy, water, or wastewater savings contracts by competitive sealed bidding.

G. Procedures for Competitive Sealed Proposals.

The appropriate Chief Procurement Officer may develop and issue procedures which shall be followed by all agencies using the competitive sealed proposal method of acquisition. Unless excused by the State Engineer for procurements with a total potential value below two million dollars, the staff of the Office of State Engineer shall oversee (1) the evaluation process for any procurement of construction if factors other than price are considered in the evaluation of a proposal, (2) any discussions with offerors conducted pursuant to Section 11-35-1530(6) or subsection I below, and (3) any negotiations conducted pursuant to Section 11-35-1530.

H. Other Applicable Provisions.

The provisions of the following Regulations shall apply to competitive sealed proposals:

(1) Regulation 19-445.2042, Pre-Bid Conferences,

(2) Regulation 19-445.2060, Telegraphic and Electronic Bids,

(3) Regulation 19-445.2075, All or None Qualifications,

(4) Regulation 19-445.2085, Correction or Withdrawal of Bids; Cancellation of Awards, and Cancellation of Awards Prior to Performance.

(5) Regulation 19-445.2137, Food Service Contracts.

I. Discussions with Offerors

(1) Classifying Proposals.

For the purpose of conducting discussions under Section 11-35-1530(6) and item (2) below, proposals shall be initially classified in writing as:

(a) acceptable (i.e., reasonably susceptible of being selected for award);

(b) potentially acceptable (i.e., reasonably susceptible of being made acceptable through discussions); or

(c) unacceptable.

(2) Conduct of Discussions.

If discussions are conducted, the procurement officer shall exchange information with all offerors who submit proposals classified as acceptable or potentially acceptable. The content and extent of each exchange is a matter of the procurement officer's judgment, based on the particular facts of each acquisition. In conducting discussions, the procurement officer shall:

(a) Control all exchanges;

(b) Advise in writing every offeror of all deficiencies in its proposal, if any, that will result in rejection as non-responsive;

(c) Attempt in writing to resolve uncertainties concerning the cost or price, technical proposal, and other terms and conditions of the proposal, if any;

(d) Resolve in writing suspected mistakes, if any, by calling them to the offeror's attention.

(e) Provide the offeror a reasonable opportunity to submit any cost or price, technical, or other revisions to its proposal, but only to the extent such revisions are necessary to resolve any matter raised by the procurement officer during discussions under items (2)(b) through (2)(d) above.

(3) Limitations. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussions and revisions of proposals. Ordinarily, discussions are conducted prior to final ranking. Discussions may not be conducted unless the solicitation alerts offerors to the possibility of such an exchange, including the possibility of limited proposal revisions for those proposals reasonably susceptible of being selected for award.

(4) Communications authorized by Section 11-35-1530(6) and items (1) through (3) above may be conducted only by procurement officers authorized by the appropriate chief procurement officer.

J. Delay in Posting Notice of Intent to Award or Award.

Regulation 19-445.2090B shall apply to competitive sealed proposals.

K. Negotiations.

A negotiation plan, commensurate with the anticipated scope of negotiations and such factors as estimated dollar value, complexity, and past experience, should be developed prior to initiating negotiations under Section 11-35-1530(8).

19-445.2097. Rejection of Proposals.

A. Unless there is a compelling reason to reject one or more proposals, award will be made to the highest ranked responsible offeror or otherwise as allowed by Section 11-35-1530. Every effort shall be made to anticipate changes in a requirement prior to the date of opening and to notify all prospective offerors of any resulting modification or cancellation.

B. Cancellation of Solicitation Prior to Award.

(1) When it is determined prior to the issuance of an award or notification of intent to award, whichever is earlier, but after opening, that the requirements relating to the availability and identification of specifications have not been met, the request for proposals shall be cancelled. A request for proposals may be cancelled after opening, but prior the issuance of an award or notification of intent to award, whichever is earlier, when such action is consistent with subsection A above and the procurement officer determines in writing that:

(a) inadequate or ambiguous specifications were cited in the solicitation;

(b) specifications have been revised;

(c) the supplies, services, information technology, or construction being procured are no longer required;

(d) the solicitation did not provide for consideration of all factors of cost to the State, such as cost of transporting state furnished property to bidders' plants;

(e) proposals received indicate that the needs of the State can be satisfied by a less expensive article differing from that on which the proposals were requested;

(f) all otherwise acceptable proposals received are at unreasonable prices;

(g) the proposals were not independently arrived at in open competition, were collusive, or were submitted in bad faith; or

(h) for other reasons, cancellation is clearly in the best interest of the State.

(2) Determinations to cancel a request for proposals shall state the reasons therefor.

C. Extension of Bid Acceptance Period.

Should administrative difficulties be encountered after opening which may delay award beyond offeror's acceptance periods, the relevant offerors should be requested, before expiration of their offers, to extend the acceptance period (with consent of sureties, if any).

19-445.2098. Rejection of Individual Proposals.

A. Proposals need not be unconditionally accepted without alteration or correction, and to the extent otherwise allowed by law, the State's stated requirements may be clarified after proposals are submitted. This flexibility must be considered in determining whether reasons exist for rejecting all or any part of a proposal.

B. Reasons for rejecting proposals include but are not limited to:

(1) the business that submitted the proposal is nonresponsible as determined under Section 11-35-1810;

(2) the proposal ultimately (that is, after an opportunity, if any is offered, has passed for altering or clarifying the proposal) fails to meet the announced requirements of the State in some material respect; or

(3) the proposed price is unreasonable.

C. The reasons for rejection shall be made a part of the procurement file and shall be available for public inspection.

D. Exceptions to Rejection Procedures.

Any proposal received after the procurement officer of the governmental body or his designee has declared that the time set for opening has arrived, shall be rejected unless the proposal had been delivered to the location specified in the solicitation or the governmental body's mail room which services that location prior to the bid opening.

19-445.2122. Price Reasonableness.

A. General. The objective of offer analysis is to ensure that the final contract price is fair and reasonable. The procurement officer is responsible for evaluating the reasonableness of the offered prices. Normally, competition establishes price reasonableness. Therefore, when contracting on a firm-fixed-price basis, comparison of the proposed prices will usually satisfy the requirement to perform a price analysis, and a cost analysis need not be performed. In limited situations, a cost analysis (see subsection B(2)) may be appropriate to establish reasonableness of the otherwise successful offeror's price. The analytical techniques and procedures described in this regulation may be used, singly or in combination with others, to ensure that the final price is fair and

reasonable. In addition, they should be used to analyze cost or pricing data required by Section 11-35-1830. The complexity and circumstances of each acquisition should determine the appropriate level of detail for the analysis. The appropriate Chief Procurement Officer may develop and issue procedures which shall be followed by all agencies conducting offer analysis. The responsible procurement officer may request the advice and assistance of other experts to ensure that an appropriate analysis is performed.

B. Analytical techniques include, but are not limited to, the following:

(1) Price analysis is the process of examining and evaluating a proposed price without evaluating its separate cost elements and proposed profit. Examples of price analysis criteria include but are not limited to: (a) price submissions of prospective bidders or offerors in the current procurement; (b) prior price quotations and contract prices charged by the bidder, offeror, or contractor; (c) prices published in catalogues or price lists; (d) prices available on the open market; and (e) in-house estimates of cost. The responsible procurement officer may use various price analysis techniques and procedures to ensure a fair and reasonable price.

(2) Cost analysis is the review and evaluation of any separate cost elements and profit or fee in an offeror's or contractor's proposal, as needed to determine a fair and reasonable price, and the application of judgment to determine how well the proposed costs represent what the cost of the contract should be, assuming reasonable economy and efficiency. Cost analysis includes the appropriate verification of cost or pricing data, and the use of this data to evaluate: (a) specific elements of costs; (b) the necessity for certain costs; (c) the reasonableness of amounts estimated for the necessary costs; (d) the reasonableness of allowances for contingencies; (e) the basis used for allocation of indirect costs; (f) the appropriateness of allocations of particular indirect costs to the proposed contract; and (g) the reasonableness of the total cost or price. The responsible procurement officer may use various cost analysis techniques and procedures to ensure a fair and reasonable price, given the circumstances of the acquisition.

C. Unbalanced pricing. All offers with separately priced line items or subline items shall be analyzed to determine if the prices are unbalanced. Unbalanced pricing exists when, despite an acceptable total evaluated price, the price of one or more line items is significantly over or understated as indicated by the application of cost or price analysis techniques. If the responsible procurement officer determines that unbalanced pricing may increase performance risk (e.g., it is so unbalanced as to be tantamount to allowing an advance payment) or could result in payment of unreasonably high prices, she may conclude that the offer is unreasonable as to price.

19-445.2127. Organizational Conflicts of Interest. [Reserved]

19-445.2140. Specifications.

A. Definitions.

(1) "Brand Name Specification" means a specification limited to one or more items by manufacturers' names or catalogue number.

(2) "Brand Name or Equal Specification" means a specification which uses one or more manufacturer's names or catalogue numbers to describe the standard of quality, performance, and other characteristics needed to meet state requirements, and which provides for the submission of equivalent products.

(3) "Qualified Products List" means an approved list of supplies, services, information technology, or construction items described by model or catalogue number, which, prior to competitive solicitation, the State has determined will meet the applicable specification requirements.

(4) "Specification" means any description of the physical, functional, or performance characteristics, or of the nature of a supply, service, information technology, or construction item. A specification includes, as appropriate, requirements for inspecting, testing, or preparing a supply, service or construction item for delivery. Unless the context requires otherwise, the terms "specification" and "purchase description" are used interchangeably throughout the Regulations.

(5) "Specification for a Common or General Use Item" means a specification which has been developed and approved for repeated use in procurements.

B. Issuance of Specifications.

The purpose of a specification is to serve as a basis for obtaining a supply, service, information technology, or construction item adequate and suitable for the State's needs in a cost effective manner, taking into account, to the extent practicable, the cost of ownership and operation as well as initial acquisition costs. It is the policy of the State that specifications permit maximum practicable competition consistent with this purpose. Specification

shall be drafted with the objective of clearly describing the State's requirements. All specifications shall be written in a non restrictive manner as to describe the requirements to be met.

C. Use of Functional or Performance Descriptions.

(1) Specifications shall, to the extent practicable, emphasize functional or performance criteria while limiting design or other detailed physical descriptions to those necessary to meet the needs of the State. To facilitate the use of such criteria, using agencies shall endeavor to include as a part of their purchase requisitions the principal functional or performance needs to be met. It is recognized, however, that the preference for use of functional or performance specifications is primarily applicable to the procurement of supplies, services, and information technology. Such preference is often not practicable in construction, apart from the procurement of supply type items for a construction project.

(2) Brand Name or Equal Specifications.

(a) Brand name or equal specifications shall include a description of the particular design, functional, or performance characteristics which are required.

(b) Where a brand name or equal specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition.

D. Preference for Commercially Available Products.

It is the general policy of this State to procure standard commercial products whenever practicable. In developing specifications, accepted commercial standards shall be used and unique requirements shall be avoided, to the extent practicable.

19-445.2152. Leases, Lease/Payment, Installment Purchase, and Rental of Personal Property.

A. Justification. A governmental body proposing to enter into an agreement other than an outright purchase is responsible for the justification of such action. Lease, lease/purchase, installment purchase, or rental agreements are subject to the procedures of the Procurement Code and these Regulations.

B. Procedures. Upon written justification by the procurement officer of the governmental body of such alternate method, the following procedures will be followed:

(1) The State of South Carolina Standard Equipment Agreement will be used in all cases unless modifications are approved by the Director of the Division of Procurement Services or his designee. A purchasing agency may enter into an agreement for the rental of equipment without using the Standard Equipment Agreement when the agreement has a total potential value of fifteen thousand dollars or less or the agreement does not exceed ninety days in duration.

(2) Installment purchases will require the governmental body to submit both a justification and purchase requisition to the appropriate chief procurement officer or his designee for processing.

(3) All lease/purchase and installment sales contracts must contain an explicitly stated rate of interest to be incurred by the State under the contract.

19-445.2180. Assignment, Novation, and Change of Name.

A. "Novation agreement" is a contractual amendment by which the State recognizes a successor in interest to a State contract as provided in this regulation. The successor in interest assumes all the obligations under the contract and the transferor, when still in existence, typically guarantees the performance of the contract by the transferee.

B. No Assignment.

No State contract is transferable, or otherwise assignable, without the written consent of the Chief Procurement Officer, the head of a purchasing agency, or the designee of either; provided, however, that a contractor may assign monies receivable under a contract after due notice from the contractor to the State.

C. Recognition of a Successor in Interest; Novation.

When in the best interest of the State, a successor in interest may be recognized in a novation agreement in which the transferor and the transferee shall agree that:

(1) the transferee assumes all of the transferor's obligations;

(2) the transferor waives all rights under the contract as against the State; and

(3) unless the transferor guarantees performance of the contract by the transferee, the transferee shall, if required, furnish a satisfactory performance bond.

D. Change of Name.
When a contractor requests to change the name in which it holds a contract with the State, the procurement officer responsible for the contract may, upon receipt of a document indicating such change of name (for example, an amendment to the articles of incorporation of the corporation), enter into an agreement with the requesting contractor to effect such a change of name. The agreement changing the name shall specifically indicate that no other terms and conditions of the contract are thereby changed.

19-445.3000. School District Procurement Codes; Model.
A. Application.
Under Section 11-35-70, a school district is exempt from the South Carolina Consolidated Procurement Code (except for a procurement audit) if the district has its own procurement code which is, in the written opinion of the Division of Procurement Services of the State Fiscal Accountability Authority, substantially similar to the provisions of the Consolidated Procurement Code and regulations in effect at the time the opinion is issued.
B. Delegation.
The authority and responsibilities under Section 11-35-70 are hereby delegated to the Materials Management Officer.
C. Substantially Similar.
To qualify for approval, a district code should largely mirror, but need not be identical to, the Consolidated Procurement Code. Because a district code needs only to be substantially similar to the consolidated procurement code and regulations, a district code may accommodate the differing context of school districts (e.g., differences between state government and local school district operations, including size, purchasing staff resources, volume and type of procurements, and structure of its governing body and executive hierarchy) as long as it preserves the sound procurement policies and practices underlying the rules found in the consolidated procurement code and regulations.
D. Definitions.
Covered District means a school district subject to the requirements of Section 11-35-70. Model code means a model school district procurement code and any subsequent modifications to the model code, including instructions regarding how each district may customize the model code to an individual district's organizational structure.
E. Guidelines; Model Code.
By requiring a written opinion, Section 11-35-70 provides for an exercise of judgment. The best interest of the state is served by exercising this judgment in a consistent manner. Accordingly, the Materials Management Office may publish guidance regarding its exercise of this judgment, including publication of a model code. In developing a model code, the Materials Management Officer should consult with all covered districts and the State Department of Education. Any model should be designed to serve and comply with the purposes and policies enumerated in Section 11-35-20 in the specific context of local school district operations, with due regard for minimizing administrative costs of compliance with the model code. Prior to publishing a model code, the Materials Management Officer must determine in writing that the model code is substantially similar to the provisions of the South Carolina Consolidated Procurement Code and these procurement regulations. Any school district may adopt the model code.
F. Duration of Written Opinion.
A written opinion issued pursuant to Section 11-35-70 remains valid for a covered district's procurement code until the covered district seeks and receives a written opinion for modifications to its procurement code.
G. Effect of Adoption.
A procurement code adopted by a school district in accordance with all applicable law shall have the full force and effect of law.

Fiscal Impact Statement:

No additional state funding is requested. The State Budget and Control Board estimates that no additional costs will be incurred by the State and its political subdivisions in complying with the proposed revisions to Regulation 19-445.

Statement of Rationale:

The Code expressly contemplates the continued development of explicit and thoroughly considered procurement policies and practices. The proposed changes are needed to accommodate developments in the law and in best practices for government procurement, and to further consolidate, clarify, and modernize the law governing procurement in this State. S.C. Code Section 11-35-20(d).

Document No. 4873
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 61
Statutory Authority: 1976 Code Sections 48-1-10 et seq.

61-62. Air Pollution Control Regulations and Standards.

Synopsis:

Pursuant to the federal Clean Air Act ("CAA"), 42 U.S.C. Sections 7401 et seq., and the South Carolina Pollution Control Act, 1976 Code Sections 48-1-10 et seq., the South Carolina Department of Health and Environmental Control ("Department") is amending South Carolina Regulation 61-62, Air Pollution Control Regulations and Standards, and the State Implementation Plan ("SIP"), as follows:

1. R.61-62.1, Definitions and General Requirements, Section II, Permit Requirements, to expand and improve consistency in language regarding general and registration permits.

2. The introductory paragraph to R.61-62.5, Standard No. 2, Ambient Air Quality Standards, to remove the sentence describing the test method for Gaseous Fluorides to improve the accuracy and clarity of the regulation's text.

3. R.61-62.5, Standard No. 5.2, Control of Oxides of Nitrogen (NO_X), to update applicability and exemptions, as well as make corrections for internal consistency, punctuation, codification, and spelling.

4. R.61-62.5, Standard No. 7, Prevention of Significant Deterioration, to update applicability and exemptions, as well as make corrections for consistency with federal regulations, internal consistency, punctuation, codification, and spelling.

5. R.61-62.5, Standard No. 7.1, Nonattainment New Source Review (NSR), to improve the overall clarity and structure of the regulation, as well as make corrections for consistency with federal regulations, internal consistency, punctuation, codification, and spelling.

6. R.61-62.1, Definitions and General Requirements; R.61-62.5, Standard No. 7, Prevention of Significant Deterioration; R.61-62.5, Standard No. 7.1, Nonattainment New Source Review (NSR); and R.61-62.70 Title V Operating Permit Program, to update public participation procedures.

7. The Department is also making other changes to R.61-62, Air Pollution Control Regulations and Standards, including definitional updates, clarification of certain permitting provisions, and other changes and additions deemed necessary, as well as corrections for internal consistency, clarification, reference, punctuation, codification, formatting, and spelling to improve the overall text of R.61-62 as necessary.

The Department does not anticipate an increase in costs to the state or its political subdivisions resulting from these proposed revisions. These changes streamline existing state requirements, ensure consistency with federal law, and improve the overall organizational structure and clarity of the Department's regulations. South Carolina industries are already subject to national air quality standards as a matter of federal law. These amendments will

benefit the regulated community by maintaining state implementation of federal requirements, as opposed to federal implementation.

The Department had a Notice of Drafting published in the October 27, 2017, *State Register* and a Notice of Proposed Regulation (Document No. 4815) published in the June 22, 2018, *State Register*. The Department originally scheduled a public hearing for September 13, 2018; however, inclement weather-related government closures pushed the public hearing to a rescheduled date (while complying with the S.C. Code Section 1-23-110(A)(3)(b) 30-day notice requirement for public hearings) outside of the one-year statutory deadline to submit amendments for General Assembly review. As such, the Department recommenced the regulatory promulgation process for the proposed amendments with a second Notice of Drafting, published November 23, 2018, to supersede the original Notice of Drafting and a second Notice of Proposed Regulation to supersede the original Notice of Proposed Regulation (Document No. 4815).

In accordance with S.C. Code Section 1-23-120(A) (Supp. 2018), these amendments require General Assembly review.

Section-by-Section Discussion of Amendments:

Amended codification and internal citations throughout to remove periods following numbers and/or letters, and replace them with parentheses enclosing updated alphanumeric characters for consistency with the 2014 South Carolina Legislative Council's Standards Manual.

Amended throughout to add the word "Part" or "Parts" to citations of parts in the Code of Federal Regulation citations for clarity and consistency.

Regulation 61-62.1, Section I, Definitions:
Paragraph (I)(26), Dioxins/Furans, is amended to strike "Code of Federal Regulations," as well as the parentheses around "CFR" and add the word "Part" to read "(40 CFR Part 60, Appendix A)" for clarity and consistency.

Regulation 61-62.1, Section I, Definitions:
Paragraph (I)(55), NAICS Code, is amended to add the numeral "(6)" after the word "six" to read "six (6)" to provide number denotation consistency throughout the text of the regulation.

Regulation 61-62.1, Section I, Definitions:
Paragraph (I)(97), Used Oil, (a) Spec. Oil (Specification Oil), is amended to strike "v. Nickel – 120 ppm maximum;" to be consistent with Department regulations and definitions for used oil.

Regulation 61-62.1, Section II, Permit Requirements:
Section (B), Exemptions from the Requirements to Obtain a Construction Permit, Paragraphs (B)(1)(b), (B)(1)(c), (B)(2)(a), and (B)(2)(b) are amended to strike "x 10^6" and add the word "million" for clarity and consistency.

Regulation 61-62.1, Section II, Permit Requirements:
Section (C), Construction Permit Applications, Paragraphs (C)(1) and (C)(2) are amended to strike the word "and," insert a comma after the words "reviewed" and "signed," and add the words "and sealed," to read "reviewed, signed, and sealed" to reflect current professional practice guidelines and Department requirements.

Regulation 61-62.1, Section II, Permit Requirements:
Section (C), Construction Permit Applications, Paragraph (C)(2)(c) is amended to strike "x 10^6" and replace with the word "million" for clarity and consistency. The period at the end of the sentence is stricken and is replaced it with a semi-colon for consistency.

Regulation 61-62.1, Section II, Permit Requirements:
Section (C), Construction Permit Applications, Paragraph (C)(2)(d) is inserted to read "Package-type concrete batch plants that are designed to be hauled to a site, set up, and broken down quickly, with little to no additional equipment needed to manufacture product." This is to expressly include package-type concrete plants within the referenced exemption.

Regulation 61-62.1, Section II, Permit Requirements:
Section (C), Construction Permit Applications, Paragraph (C)(3)(a) is amended to strike the phrase "and the name, mailing address, and telephone number of the owner or operator for the facility" and replace it with the phrase "(the name used to identify the facility at the location requesting the permit);" for clarity and consistency.

Regulation 61-62.1, Section II, Permit Requirements:
Section (C), Construction Permit Applications, Paragraph (C)(3)(b) is amended strike the phrase "and the name, mailing address, and telephone number of the facility's contact person" for clarity and consistency.

Regulation 61-62.1, Section II, Permit Requirements:
Section (C), Construction Permit Applications, Paragraph (C)(3)(c) is inserted to add the sentence "The name, mailing address, e-mail address and telephone number of the owner or operator for the facility;" for clarity and consistency.

Regulation 61-62.1, Section II, Permit Requirements:
Section (C), Construction Permit Applications, Paragraph (C)(3)(d) is inserted to add the sentence "The name, mailing address, e-mail address and telephone number of the facility's air permit contact person;" for clarity and consistency.

Regulation 61-62.1, Section II, Permit Requirements:
Section (C), Construction Permit Applications, former Paragraphs (C)(3)(c) through (C)(3)(p) are recodified to (C)(3)(e) through (C)(3)(r) for clarity and consistency.

Regulation 61-62.1, Section II, Permit Requirements:
Section (D), General Construction Permits, Paragraph (D)(2) is amended to add the word "Any" at the beginning of the sentence, to strike the upper case "G" to lower case "g" to read "general," and strike the letter "s" from the word "permits" for clarity and consistency.

Regulation 61-62.1, Section II, Permit Requirements:
Section (D), General Construction Permits, former Paragraph (D)(3) is recodified (D)(3)(a). Paragraph (D)(3), title, is added to read "Coverage under a General Construction Permit," for clarity.

Section (D), General Construction Permits, Paragraph (D)(3)(b) is inserted to read "A source that has submitted an individual construction permit application to the Department and has not requested coverage under the conditions and terms of a general construction permit for similar sources, but which is determined to qualify for coverage under a general construction permit, may be granted coverage under the general construction permit at the sole discretion of the Department." This action is taken to reflect current work practices by Department staff and to clarify and streamline the application process.

Regulation 61-62.1, Section II, Permit Requirements:
Section (D), General Construction Permits, Paragraph (D)(4) is amended to add the word "A" at the beginning of the sentence, and change "Sources" to "source" for clarity and consistency. Also amended to strike the word "a" before "source" in the latter part of the sentence and replace with "the" to read "the source" for clarity and consistency.

Regulation 61-62.1, Section II, Permit Requirements:

Section (D), General Construction Permits, Paragraph (D)(5) is amended to strike the "'s" after the word "source" and the phrase "request for" to read "The Department may grant a source authorization to operate under a general construction permit, but such a grant shall be a final permit action for purposes of judicial review" for appropriate punctuation, clarity and consistency.

Regulation 61-62.1, Section II, Permit Requirements:
Section (E), Synthetic Minor Construction Permits, Paragraph (E)(4) General Synthetic Minor Construction Permits, (E)(4)(b) is amended to strike "the general permit" at the end of the sentence and replace it with "coverage under a general synthetic minor construction permit" for clarity and consistency.

Regulation 61-62.1, Section II, Permit Requirements:
Section (E), Synthetic Minor Construction Permits, Paragraph (E)(4), General Synthetic Minor Construction Permits, former (E)(4)(c) is recodified to (E)(4)(c)(i) and amended to add the phrase "synthetic minor construction" and to strike the word "the" in both instances of the second sentence and replace it with the word "a" for clarity and consistency. Paragraph (E)(4)(c), title, is added to read "Coverage under a General Synthetic Minor Construction Permit," for clarity.

Regulation 61-62.1, Section II, Permit Requirements:
Section (E), Synthetic Minor Construction Permits, Paragraph (E)(4), General Synthetic Minor Construction Permits, (E)(4)(c)(ii) is inserted to read "A source that has submitted an individual synthetic minor construction permit application and has not requested coverage under the conditions and terms of a general synthetic minor construction permit for similar sources, but which is determined to qualify for coverage under a general synthetic minor construction permit, may be granted coverage under the general synthetic minor construction permit at the sole discretion of the Department." This action is taken to clarify current work practices by the Department and to streamline the application process.

Regulation 61-62.1, Section II, Permit Requirements:
Section (E), Synthetic Minor Construction Permits, Paragraph (E)(4), General Synthetic Minor Construction Permits, (E)(4)(d) is amended to strike the phrase "the conditions and terms of the" and replace it with the phrase "coverage under a" for clarity and consistency.

Regulation 61-62.1, Section II, Permit Requirements:
Section (E), Synthetic Minor Construction Permits, Paragraph (E)(4), General Synthetic Minor Construction Permits, (E)(4)(e) is amended to replace "general permit" with "general synthetic minor construction permit" for clarity and consistency.

Regulation 61-62.1, Section II, Permit Requirements:
Section (E), Synthetic Minor Construction Permits, Paragraph (E)(4), General Synthetic Minor Construction Permits, (E)(4)(f) is amended to replace "general permit" with "general synthetic minor construction permit" for clarity and consistency.

Regulation 61-62.1, Section II, Permit Requirements:
Section (E), Synthetic Minor Construction Permits, Paragraph (E)(4), General Synthetic Minor Construction Permits, (E)(4)(g) is inserted for consistency and to clarify a source's ability to request an individual synthetic minor construction permit in lieu of coverage under a general synthetic minor construction permit.

Regulation 61-62.1, Section II, Permit Requirements:
Section (F), Operating Permits, Paragraph (F)(2) is inserted to add text to further explain compliance conditions for operating a source under the terms and conditions of a construction permit pending issuance of an operating permit.

Regulation 61-62.1, Section II, Permit Requirements:

Section (F), Operating Permits, former (F)(2) is recodified to (F)(3) and amended to clarify the paragraph's applicability to sources issued construction permits that include engineering and/or construction specifications.

Regulation 61-62.1, Section II, Permit Requirements:
Section (F), Operating Permits, former Paragraph (F)(3), Request for a New or Revised Operating Permit is recodified to (F)(4) for consistency.

Regulation 61-62.1, Section II, Permit Requirements:
Section (F), Operating Permits, Paragraph (F)(5), General Operating Permits (including (F)(5)(a) through (F)(5)(f) and subparagraphs (F)(5)(c)(i) and (ii)) is inserted to establish conditions for Department development and issuance of general operating permits to reflect current Department practices and streamline permit issuance.

Regulation 61-62.1, Section II, Permit Requirements:
Section (G), Conditional Major Operating Permits, Paragraph (G)(2), General Provisions, former (G)(2)(d) is stricken to improve clarity and avoid duplication.

Regulation 61-62.1, Section II, Permit Requirements:
Section (G), Conditional Major Operating Permits, Paragraph (G)(2), General Provisions, former (G)(2)(e) and (G)(2)(f) are recodified to (G)(2)(d) and (G)(2)(e), respectively for clarity and consistency.

Regulation 61-62.1, Section II, Permit Requirements:
Section (G), Conditional Major Operating Permits, Paragraph (G)(7), General Conditional Major Operating Permits, former paragraph (G)(7)(c) is recodified (G)(7)(c)(i). Paragraph (G)(7)(c), title, is added to read "Coverage under a General Conditional Major Operating Permit" for clarity.

Regulation 61-62.1, Section II, Permit Requirements:
Section (G), Conditional Major Operating Permits, Paragraph (G)(7), General Conditional Major Operating Permits, (G)(7)(c)(ii) is inserted to read "A source that has submitted an individual permit application to the Department and has not requested coverage under the conditions and terms of a general conditional major operating permit for similar sources, but which is determined to qualify for coverage under a general conditional major operating permit, may be granted coverage under the general conditional major operating permit at the sole discretion of the Department." This action is taken to reflect current work practices by Department staff and to clarify and streamline the permit process.

Regulation 61-62.1, Section II, Permit Requirements:
Section (G), Conditional Major Operating Permits, Paragraph (G)(7), General Conditional Major Operating Permits, (G)(7)(d) is amended to strike the phrase "the conditions and terms of" and replace it with the phrase "coverage under" for clarity and consistency.

Regulation 61-62.1, Section II, Permit Requirements:
Section (G), Conditional Major Operating Permits, Paragraph (G)(7), General Conditional Major Operating Permits, (G)(7)(e) is amended to strike the "'s" after word "source" and to strike the phrase "request for" and add the phrase "conditional major operating" to read "The Department may grant a source authorization to operate under a general conditional major operating permit without further public notice, but such a grant shall be a final permit action for purposes of judicial review." for appropriate punctuation, clarity and consistency.

Regulation 61-62.1, Section II, Permit Requirements:
Section (G), Conditional Major Operating Permits, Paragraph (G)(7), General Conditional Major Operating Permits, (G)(7)(f) is amended to replace "general permit" with "general conditional major operating permit" for clarity and internal consistency.

Regulation 61-62.1, Section II, Permit Requirements:

Section (G), Conditional Major Operating Permits, Paragraph (G)(7), General Conditional Major Operating Permits, (G)(7)(g) is inserted for consistency and to clarify a source's ability to request an individual conditional major operating permit in lieu of coverage under a general conditional major operating permit.

Regulation 61-62.1, Section II, Permit Requirements:
Section (H), Operating Permit Renewal Requests, Paragraph (H)(1) is inserted to add language to improve clarity and reflect current Department practices regarding renewal of operating permits.

Regulation 61-62.1, Section II, Permit Requirements:
Section (H), Operating Permit Renewal Requests, former Paragraphs (H)(1) through (H)(4) are recodified to (H)(2) through (H)(5) respectively for consistency.

Regulation 61-62.1, Section II, Permit Requirements:
Section (H), Operating Permit Renewal Requests, Paragraph (H)(5)(a) is amended to strike the phrase "and the name, mailing address, and telephone number of the owner or operator for the facility" and replace it with the phrase "(the name used to identify the facility at the location requesting the permit)" for clarity and consistency.

Regulation 61-62.1, Section II, Permit Requirements:
Section (H), Operating Permit Renewal Requests, Paragraph (H)(5)(b) is amended to strike the phrase "and the name, mailing address, and telephone number of the facility's contact person" for clarity and consistency.

Regulation 61-62.1, Section II, Permit Requirements:
Section (H), Operating Permit Renewal Requests, Paragraph (H)(5)(c) is inserted to add the language "The name, mailing address, e-mail address and telephone number of the owner or operator for the facility;" for clarity and consistency.

Regulation 61-62.1, Section II, Permit Requirements:
Section (H), Operating Permit Renewal Requests, Paragraph (H)(5)(d) is inserted to add the language "The name, mailing address, e-mail address and telephone number of the facility's air permit contact person;" for clarity and consistency.

Regulation 61-62.1, Section II, Permit Requirements:
Section (H), Operating Permit Renewal Requests, former Paragraphs (H)(5)(c) through (H)(5)(j) are recodified to (H)(5)(e) through (H)(5)(l) for clarity and consistency.

Regulation 61-62.1, Section II, Permit Requirements:
Section (I), Registration Permits, Paragraph (I)(1), Development of Registration Permits, (I)(1)(a) is amended to add the phrase "and issue a" and strike the letter "s" from permits so that the first sentence reads: "The Department may develop and issue a registration permit applicable to similar sources." for punctuation, clarity and consistency. The remainder of (I)(1)(a) is recodified as (I)(1)(b) and amended to read "Any registration permit developed shall incorporate all requirements applicable to the construction and operation of similar sources and shall identify criteria by which sources may qualify for coverage under a registration permit." for clarity and consistency.

Regulation 61-62.1, Section II, Permit Requirements:
Section (I), Registration Permits, Paragraph (I)(1), Development of Registration Permits, former (I)(1)(b) is recodified to (I)(1)(c) for internal consistency.

Regulation 61-62.1, Section II, Permit Requirements:
Section (I), Registration Permits, Paragraph (I)(2), Application for Coverage Under a Registration Permit, former Paragraph (I)(2)(a) is recodified (I)(2)(a)(i) and amended so that the first sentence reads "Sources may submit a permit application to the Department with a request for coverage under the conditions and terms of a registration permit for similar sources in lieu of a construction and operating permit as provided in Section II(A)

and (F) above." to clarify conditions and terms for applying for coverage under a registration permit. Paragraph (I)(2)(a), title, is added to read "Coverage under a Registration Permit" for clarity.

Regulation 61-62.1, Section II, Permit Requirements:
Section (I), Registration Permits, Paragraph (I)(2), Application for Coverage Under a Registration Permit, (I)(2)(a)(ii) is inserted to read "A source that has submitted an individual permit application to the Department and has not requested coverage under the conditions and terms of a registration permit for similar sources, but which is determined to qualify for a registration permit, may be granted coverage under the registration permit at the sole discretion of the Department." This action is to clarify and streamline the permit process.

Regulation 61-62.1, Section II, Permit Requirements:
Section (I), Registration Permits, Paragraph (I)(2), Application for Coverage Under a Registration Permit, (I)(2)(b) is amended at the first sentence to strike the phrase "the conditions and terms of" and replace it with "coverage under" for clarity and consistency. The remainder of this subparagraph is recodified as (I)(2)(c) for clarity.

Regulation 61-62.1, Section II, Permit Requirements:
Section (I), Registration Permits, Paragraph (I)(2), Application for Coverage Under a Registration Permit, former (I)(2)(c) is recodified to (I)(2)(d) and amended to strike "'s request for" to read "The Department may grant a source authorization to operate under a registration permit, but such a grant shall be a final permit action for purposes of judicial review language." to improve clarity and internal consistency.

Regulation 61-62.1, Section II, Permit Requirements:
Section (I), Registration Permits, Paragraph (I)(2), Application for Coverage Under a Registration Permit, (I)(2)(e) is inserted to read "A source that qualifies for coverage under a Department issued registration permit may submit a permit application to the Department and request an individual permit in lieu of coverage under a general registration permit." to specify that a source may request an individual permit.

Regulation 61-62.1, Section II, Permit Requirements:
Section (J), Permit Conditions, Paragraph (J)(2), Special Permit Conditions, (J)(2)(b) is amended to add a hyphen between the words "short" and "term" to read "short-term" for appropriate punctuation.

Regulation 61-62.1, Section II, Permit Requirements:
Section (N), Public Participation Procedures, Paragraph (N)(1) is amended to replace "posting to the Department's website" with "posting to a public website identified by the Department" for consistency with federal regulations, and amended to clarify the Department's authority to use additional means of public notice, including but not limited to public meetings.

Regulation 61-62.1, Section IV, Source Tests:
Section (B), Submission and Approval of a Site-Specific Test Plan, Paragraph (B)(5)(a) is amended to add the phrase "or as otherwise specified by a relevant federal or state requirement" to read "The owner, operator, or representative shall submit site-specific test plans or a letter which amends a previously approved test plan at least forty-five (45) days prior to the proposed test date or as otherwise specified by a relevant federal or state requirement." to cite appropriate federal or state requirements for amending an approved test plan to reflect current Department practice.

Regulation 61-62.1, Section IV, Source Tests:
Section (C), Requirements for a Site-Specific Test Plan, is amended to strike the parentheses around the internal citations and reflect the recodification of "IV.C.1" and "C.8" to "IV(C)(1)" and "(C)(8)" for consistency.

Regulation 61-62.1, Section IV, Source Tests:

Section (C), Requirements for a Site-Specific Test Plan, Paragraph (C)(3), Process Descriptions, (C)(3)(b) is amended to read "Process design rates, normal operating rates, and operating rates specified by applicable regulation" to clarify the appropriate rate requirement.

Regulation 61-62.1, Section IV, Source Tests:
Section (D), Notification and Conduct of Source Tests, Paragraph (D)(1) is amended to add the phrase "or as otherwise specified by a relevant federal or state requirement" to read "Prior to conducting a source test subject to this section, the owner, operator, or representative shall ensure that a complete written notification is submitted to the Department at least two (2) weeks prior to the test date or as otherwise specified by a relevant federal or state requirement." to clarify the appropriate written notification period prior to conducting a source test subject to this section for clarity and internal consistency.

Regulation 61-62.1, Section IV, Source Tests:
Section (D), Notification and Conduct of Source Tests, Paragraph (D)(5) is amended to add the phrase "or as otherwise specified by a relevant federal or state requirement" to read "Unless approved otherwise by the Department, the owner, operator, or representative shall ensure that source tests are conducted while the source is operating at the maximum expected production rate or other production rate or operating parameter which would result in the highest emissions for the pollutants being tested or as otherwise specified in a relevant federal or state requirement." to clarify the appropriate production rate or operating parameter to be used while conducting a source test for clarity and internal consistency.

Regulation 61-62.1, Section IV, Source Tests:
Section (F), Final Source Test Report, Paragraph (F)(1) is amended to strike the word "standard" and replace it with "requirement" for clarity and consistency.

Regulation 61-62.5, Standard No. 2, Ambient Air Quality Standards

Regulation 61-62.5, Standard No. 2, Ambient Air Quality Standards:
First paragraph is amended to add the word "Part" to citations of parts in the Code of Federal Regulations citations for clarity and consistency. The last sentence is stricken as obsolete because the pollutant "Gaseous Fluorides (as HF)" and all associated parameters are no longer a part of this regulation.

Regulation 61-62.5, Standard No. 5.2, Control of Oxides of Nitrogen (NO_X)

Amended codification and internal citations throughout to replace periods following numbers and/or letters with parentheses enclosing updated alphanumeric characters for consistency with the 2014 South Carolina Legislative Council's Standards Manual.

Amended throughout to add the word "Part" or "Parts" to citations of parts in the Code of Federal Regulation citations for clarity and consistency.

Regulation 61-62.5, Standard No. 5.2, Section I, Applicability:
Section (B), Exemptions, Paragraphs (B)(1) and (B)(2) are stricken and replaced with language to ensure consistency and clarify those sources that are exempt from the requirements of this regulation, including boilers of less than 10 million British thermal unit per hour (BTU/hr) rated input. Paragraph (B)(3) is added to exempt sources with an uncontrolled potential to emit of less than five tons per year of NO_X. Former (B)(3) through (B)(7) are recodified to (B)(4) through (B)(8) for consistency.

Regulation 61-62.5, Standard No. 5.2, Section I, Applicability:
Section (B), Exemptions, former (B)(8) through (B)(16) are recodified to (B)(10) through (B)(18) for consistency. Paragraph (B)(9) is added to include Regulation 61-62.97, Cross-State Air Pollution Rule (CSAPR) Trading Program, in the exemptions, under a separate paragraph, in response to a comment by the EPA.

Regulation 61-62.5, Standard No. 5.2, Section I, Applicability:
Section (B), Exemptions, Paragraph (B)(17) is amended to change alphanumeric codification after "Section" from "(1)" to "I" for consistency.

Regulation 61-62.5, Standard No. 5.2, Section II, Definitions:
Section (G) is amended to add a comma after "June 25, 2004" to correct punctuation and for consistency and to change alphanumeric codification after "Section" from "(1)" to "I" for consistency.

Regulation 61-62.5, Standard No. 5.2, Section II, Definitions:
Section (I) is amended to add a comma after "June 25, 2004" to correct punctuation and for consistency and to strike the parentheses enclosing "I" to correct codification for consistency.

Regulation 61-62.5, Standard No. 5.2, Section II, Definitions:
Section (J) is inserted to define the term non-routine maintenance for clarification.

Regulation 61-62.5, Standard No. 5.2, Section II, Definitions:
Former Section (J), Source, is recodified as (K) and amended to strike the phrase "an individual NO_X emission unit" and replace it with the phrase "a stationary NO_X emission unit, comprised of one or more burners" to clarify the definition.

Regulation 61-62.5, Standard No. 5.2, Section III, Standard Requirements For New Affected Sources:
Table 1- NO_X Control Standards, Subsection "Propane and/or Natural Gas-Fired Boilers", first column, is amended to delete an extra space between the open parenthesis and MMBtu/hr to read "(MMBtu/hr)."

Regulation 61-62.5, Standard No. 5.2, Section III, Standard Requirements For New Affected Sources:
Table 1- NO_X Control Standards, Subsection "Propane and/or Natural Gas-Fired Boilers", second column, is amended to strike the word "metric". The use of the word "metric" is inaccurate for (MMBTU), which is meant to represent a thousand thousand BTUs, equivalent to one million BTUs.

Regulation 61-62.5, Standard No. 5.2, Section III, Standard Requirements For New Affected Sources:
Table 1- NO_X Control Standards, Subsection "Multiple Fuel Boilers", first block, second column/ninth line, is amended to add the phrase "and/or propane," to the end of "…from combustion of natural gas," to clarify fuel types covered under the emission limit.

Regulation 61-62.5, Standard No. 5.2, Section III, Standard Requirements For New Affected Sources:
Table 1- NO_X Control Standards, Subsection "Multiple Fuel Boilers", second block, second column/ninth line, is amended to add the phrase "and/or propane," to the end of "…from combustion of natural gas," to clarify fuel types covered under the emission limit.

Regulation 61-62.5, Standard No. 5.2, Section III, Standard Requirements For New Affected Sources:
Table 1- NO_X Control Standards, Subsection "Fluidized Bed Combustion (FBC) Boiler" title is amended to center it in the table for internal consistency.

Regulation 61-62.5, Standard No. 5.2, Section III, Standard Requirements For New Affected Sources:
Table 1- NO_X Control Standards, Subsection "Other" title is amended to center it in the table for internal consistency. Subsection "Other," first block, second column/first line, is amended to strike the word "Forth" and replace it with the word "Fourth" to correct spelling.

Regulation 61-62.5, Standard No. 5.2, Section IV, Monitoring, Record Keeping, and Reporting Requirements for New Affected Sources:
Section (A), Boilers, Paragraph (A)(1), CEMS, (A)(1)(d)(ii) is amended to delete the phrase "startups, shutdowns, and" to correct requirements related to record maintenance.

Regulation 61-62.5, Standard No. 5.2, Section IV, Monitoring, Record Keeping, and Reporting Requirements for New Affected Sources:
Section (A), Boilers, Paragraph (A)(4), Tune-ups, is amended to add the second sentence "If the owner or operator of a boiler is not subject to the federal tune-up requirements (40 CFR Part 63), then the following requirements are applicable:" to clarify tune-up instructions for sources not subject to the Boiler MACT.

Regulation 61-62.5, Standard No. 5.2, Section IV, Monitoring, Record Keeping, and Reporting Requirements for New Affected Sources:
Section (A), Boilers, Paragraph (A)(4), Tune-ups, is amended to insert "(a) The first tune-up shall be conducted no more than twenty-four (24) months from start-up of operation for new affected sources." to clarify the timeframe for tune-up to occur.

Regulation 61-62.5, Standard No. 5.2, Section IV, Monitoring, Record Keeping, and Reporting Requirements for New Affected Sources:
Section (A), Boilers, Paragraph (A)(4), Tune-ups, former (A)(4)(a) is recodified to (A)(4)(b), and amended to strike the letter "s" from "owners" to read "owner" to correct punctuation and for consistency.

Regulation 61-62.5, Standard No. 5.2, Section IV, Monitoring, Record Keeping, and Reporting Requirements for New Affected Sources:
Section (A), Boilers, Paragraph (A)(4), Tune-ups, former (A)(4)(b) and (A)(4)(c) are recodified to (A)(4)(c) and (A)(4)(d), respectively for consistency.

Regulation 61-62.5, Standard No. 5.2, Section IV, Monitoring, Record Keeping, and Reporting Requirements for New Affected Sources:
Section (A), Boilers, Paragraph (A)(5), Other Requirements, is amended to delete the phrase "startup, shutdown, or" to correct requirements related to record maintenance.

Regulation 61-62.5, Standard No. 5.2, Section IV, Monitoring, Record Keeping, and Reporting Requirements for New Affected Sources:
Section (B), Internal Combustion Engines, Paragraph (B)(3), Tune-ups, is amended to add a second sentence: "If the owner or operator of an internal combustion engine is not subject to the federal tune-up requirements (40 CFR Part 63), then the following requirements are applicable:" to clarify tune-up instructions for sources not subject to the Boiler MACT.

Regulation 61-62.5, Standard No. 5.2, Section IV, Monitoring, Record Keeping, and Reporting Requirements for New Affected Sources:
Section (B), Internal Combustion Engines, Paragraph (B)(5), Other Requirements, is amended to delete the phrase "startup, shutdown, or" to correct requirements related to record maintenance.

Regulation 61-62.5, Standard No. 5.2, Section IV, Monitoring, Record Keeping, and Reporting Requirements for New Affected Sources:
Section (C), Turbines, Paragraph (C)(3), Periodic Monitoring and/or Source Test, (C)(3)(d), is amended to add a comma after "twenty-four (24) months" to correct punctuation and for internal consistency.

Regulation 61-62.5, Standard No. 5.2, Section IV, Monitoring, Record Keeping, and Reporting Requirements for New Affected Sources:
Section (C), Turbines, Paragraph (C)(6), Other Requirements, is amended to delete the phrase "startup, shutdown, or" to correct requirements related to record maintenance.

Regulation 61-62.5, Standard No. 5.2, Section IV, Monitoring, Record Keeping, and Reporting Requirements for New Affected Sources:
Section (D), All Other Affected Source Types, is amended to add section (D)(4) "Other Requirements" and the text "The owner or operator shall maintain records of the occurrence and duration of any malfunction in the

operation of an affected source; any malfunction of the air pollution control equipment; or any periods during which a continuous monitoring system or monitoring device is inoperative." to describe record keeping requirements for an affected source during these conditions.

Regulation 61-62.5, Standard No. 5.2, Section VII, Tune-up Requirements For Existing Sources:
Section (A) is amended to strike language addressing the deadline for the first tune-up for new affected sources to avoid duplication and to correct for text error.

Regulation 61-62.5, Standard No. 7, Prevention of Significant Deterioration

Amended codification and internal citations throughout to update alphanumeric characters for consistency with the 2014 South Carolina Legislative Council's Standards Manual.

Amended throughout to strike the abbreviation "(tpy)" and replace it with the phrase "tons per year" for clarity and consistency.

Amended throughout to add the word "Part" or "Parts" to citations of parts in the Code of Federal Regulation citations for clarity and consistency.

Amended throughout to write out the numbers such as "twenty-four" and place parentheses around the numerals for the phrases to provide number denotation consistency throughout the text of the regulation.

Amended throughout to strike the word "paragraph" and replace with "Section" when citing sections for clarity and consistency.

Regulation 61-62.5, Standard No. 7, Section (A)(2), Applicability procedures:
Former (a)(2)(iv)(a) is recodified (A)(2)(d)(i), and amended to strike the phrase "paragraphs (a)(2)(v) and (vi)" and replace with the phrase "paragraph (A)(2)(e)" to reflect recodification and remove second nonexistent citation.

Regulation 61-62.5, Standard No. 7, Section (B), Definitions:
Section (B), Definitions, is amended to remove quotation marks from each defined term for consistency with other regulations throughout Regulation 61-62.

Regulation 61-62.5, Standard No. 7, Section (B), Definitions:
Former (b)(5)(ii)(b) is recodified (B)(5)(b)(ii), and amended to strike the period at the end of the paragraph, and add the phrase "and would be constructed in the same state as the state proposing the redesignation" for consistency with federal regulation.

Regulation 61-62.5, Standard No. 7, Section (B), Definitions:
Former (b)(9) is recodified (B)(9)(a), and is amended to strike the numbers "003-005-00176-0" and replace with "003-005-00716-0" to correct a typographical error.

Regulation 61-62.5, Standard No. 7, Section (B), Definitions:
Paragraph (B)(9)(b) is added for consistency with changes to the federal definition of "Building, structure, facility or installation."

Regulation 61-62.5, Standard No. 7, Section (B), Definitions:
Former (b)(10), (b)(30)(ii), and (b)(32)(ii) are recodified (B)(10), (B)(30)(b), and (B)(32)(b), and are amended to strike the phrase "oxides of" and add the word "oxides" to read "nitrogen oxides" for clarity and consistency.

Regulation 61-62.5, Standard No. 7, Section (B), Definitions:

Former Paragraphs (b)(30)(iii)(e) and (b)(30)(iii)(f) are recodified (B)(30)(c)(v) and (B)(30)(c)(vi), and are amended to strike the lowercase "subpart" and replace with capitalized "Subpart" and add the phrase "Part 51," to read "40 CFR Part 51, Subpart I" to properly cite the federal regulation.

Regulation 61-62.5, Standard No. 7, Section (B), Definitions:
Former (b)(30)(v) is recodified (B)(30)(e), and amended to strike all language except the codification, and add "[Reserved]" for consistency with federal regulations.

Regulation 61-62.5, Standard No. 7, Section (B), Definitions:
Former (b)(32)(i)(a) is recodified (B)(32)(a)(i), and amended to add the phrase "(with thermal dryers)" to the reference to primary aluminum ore reduction plants to read "primary aluminum ore reduction plants (with thermal dryers)," for consistency with federal regulations.

Regulation 61-62.5, Standard No. 7, Section (B), Definitions:
Former (b)(34)(iii) is recodified (B)(34)(c), and amended to strike subparagraphs formerly codified (b), (c) and (d) in their entirety, and amended to add "[Reserved]" to the newly codified paragraph "(B)(34)(c)(ii)" to clarify the criteria for creditable emissions in the regulation's definition of net emissions increase.

Regulation 61-62.5, Standard No. 7, Section (B), Definitions:
Former (b)(36) is recodified (B)(36), and amended to strike the phrase "[Reserved]" and add the definition for pollution prevention, for consistency with federal regulation.

Regulation 61-62.5, Standard No. 7, Section (B), Definitions:
Former (b)(44)(i)(b) is recodified (B)(44)(a)(ii), and amended to strike the former citation to "(i)(b)" and add the word "this" to read "identified under this paragraph" for clarity.

Regulation 61-62.5, Standard No. 7, Section (B), Definitions:
Former (b)(45) is recodified (B)(45), and amended to strike the word "credible" and replace with the word "creditable" to correct a typographical error.

Regulation 61-62.5, Standard No. 7, Section (B), Definitions:
Former (b)(49)(i) is recodified (B)(49)(a), and amended to strike the non-codified list titled "Pollutant and Emissions Rate" and replace the list with a table format for ease of use.

Regulation 61-62.5, Standard No. 7, Section (C), Ambient air increments:
Amended to codify previously uncodified text as Paragraphs (C)(1) and (C)(2) for correct codification.

Regulation 61-62.5, Standard No. 7, Section (G), Redesignations:
Former (g)(4) is recodified (G)(4), and amended to strike the first colon and capitalized phrase "Provided, That" and replace with a comma and the lowercase phrase "provided that" to ensure internal consistency.

Regulation 61-62.5, Standard No. 7, Section (I), Exemptions:
Former (i)(2) is recodified (I)(2), and amended to replace "section" with "Section" for internal consistency.

Regulation 61-62.5, Standard No. 7, Section (I), Exemptions:
Former (i)(5)(i) is recodified (I)(5)(a), and amended to strike the non-codified list following the phrase "less than the following amounts" and replace the list with a table format for ease of use.

Regulation 61-62.5, Standard No. 7, Section (I), Exemptions:
Revised to add language in alphanumeric order at paragraph (I)(11) and subparagraphs (a) through (b), to clarify sources that are exempt from Section (K) of this regulation, to ensure consistency with the federal requirements.

Regulation 61-62.5, Standard No. 7, Section (P):

Retitled "Sources impacting Federal Class I areas – additional requirements." for consistency with federal regulations.

Regulation 61-62.5, Standard No. 7, Section (P):
Former (p)(5) is recodified (P)(5), and amended to strike the first colon and capitalized phrase "Provided, That" and replace with a comma and the lowercase phrase "provided that" to ensure internal consistency.

Regulation 61-62.5, Standard No. 7, Section (P):
Former (p)(6) is recodified (P)(6), and amended to strike the colon and the capitalized word "Provided", and replace them with the lowercase word "provided" to ensure internal consistency.

Regulation 61-62.5, Standard No. 7, Section (P):
Former (p)(7) is recodified (P)(7), and amended to strike the colon and the capitalized word "Provided", and replace them with the lowercase word "provided" to ensure internal consistency.

Regulation 61-62.5, Standard No. 7, Section (Q), Public participation:
Former (q)(2)(iii) is recodified (Q)(2)(c), and amended to define the consistent noticing method for draft permits subject to this regulation, to read "Notify the public, by posting the notice, for the duration of the public comment period, on a public website identified by the Department. This consistent noticing method shall be used for all draft permits subject to notice under this section. The public website notice shall include a notice of public comment including notice of the application, the preliminary determination, the degree of increment consumption that is expected from the source or modification, and the opportunity for comment at a public hearing as well as written public comment. The public website notice shall also include the draft permit, information on how to access the administrative record for the draft permit and how to request and/or attend a public hearing on the draft permit. The Department may use additional means to provide adequate notice to the affected public, including by publishing the notice in a newspaper of general circulation in each region in which the proposed source or modification would be constructed (or in a state publication designed to give general public notice)."

Regulation 61-62.5, Standard No. 7, Section (R), Source obligation:
Former (r)(6) is recodified (R)(6), and amended to strike the word "to" in the first sentence and replace it with the phrase "with respect to any regulated NSR pollutant emitted from" for consistency with federal regulations.

Regulation 61-62.5, Standard No. 7, Section (R), Source obligation:
Paragraphs (R)(6)(c) and (R)(6)(g) are inserted in alpha-numeric order to ensure consistency with the federal requirements, and former subparagraphs (r)(6)(i), (r)(6)(ii), and (r)(6)(iii) through (r)(6)(v) are recodified as (R)(6)(a), (R)(6)(b), and (R)(6)(d) through (R)(6)(f), for internal consistency.

Regulation 61-62.5, Standard No. 7, Section (AA), Actuals PALs:
Former (aa)(1)(ii)(b) is recodified (AA)(1)(b)(ii), and amended to add the phrase "the change" to the second sentence to read "However, the change will be reviewed" for clarity and grammatical correctness, and amended to correct the internal reference in the second sentence to read "Regulation 61-62.1 Section II, Permit Requirements" for clarity and consistency.

Regulation 61-62.5, Standard No. 7, Section (AA), Actuals PALs:
Former (aa)(2), Definitions, is recodified (AA)(2), and amended to remove quotation marks from each definition for consistency with other regulations throughout Regulation 61-62.

Regulation 61-62.5, Standard No. 7, Section (AA), Actuals PALs:
Former (aa)(5) is recodified (AA)(5), and amended to change "section" to "Section" and add "This includes the requirement that the Department provide the public with notice of the proposed approval of a PAL permit and at least a thirty (30)-day period for submittal of public comment." for consistency with federal regulations.

Regulation 61-62.5, Standard No. 7, Section (AA), Actuals PALs:
Former (aa)(14), (aa)(14)(i)(g), and (aa)(14)(ii)(d) are recodified (AA)(14), (AA)(14)(a)(vii), and (AA)(14)(b)(iv), and amended to strike the phrase "the applicable title V operating permit program" and replace with the phrase "Regulation 61-62.70" for clarity.

Regulation 61-62.5, Standard No. 7.1, Nonattainment New Source Review (NSR)

Amended codification and internal citations throughout to update alphanumeric characters for consistency with the 2014 South Carolina Legislative Council's Standards Manual, and to reflect repositioning of various provisions for improved organization and clarity.

Amended throughout to strike the word "paragraph" and replace with "Section" when citing sections for clarity and consistency.

Amended throughout to strike the phrase "oxides of nitrogen" and add the phrase "nitrogen oxides" for clarity and consistency.

Amended throughout to strike the abbreviation "(tpy)" and replace it with the phrase "tons per year" for clarity and consistency.

Amended throughout to add the word "Part" or "Parts" to citations of parts in the Code of Federal Regulation citations for clarity and consistency.

Amended throughout to write out the numbers such as "twenty-four" and place parentheses around the numerals to provide number denotation consistency throughout the text of the regulation.

Regulation 61-62.5, Standard No. 7.1, Section (A), Applicability:
Former Section (a) is recodified Section (A), and amended to include former paragraphs (b)(1) through (b)(7) recodified as paragraphs (A)(4) through (A)(9) in alphanumeric order, and strike the section title "(b) Applicability procedures." Section (A) is also amended to add the language formerly codified at Section (e), "Exemptions", to the newly codified paragraph (A)(10) and subparagraphs (A)(10)(a) through (A)(10)(aa). These revisions are to ensure clarity, improved organization, and internal consistency.

Regulation 61-62.5, Standard No. 7.1, Section (A), Applicability:
Former (b)(1) is recodified (A)(4), and amended to strike the word "contained" and replace it with "as defined" for consistency throughout the regulation, and amended to strike the citation "(15)" and replace it with the citation "(B)(37)" to correct a typographical error with the citation of the definition of "Significant."

Regulation 61-62.5, Standard No. 7.1, Section (A), Applicability:
Former (b)(4) is recodified (A)(7), and amended to strike the phrase "(b)(37) of Regulation 61-62.5 Standard 7, "Prevention of Significant Deterioration" ("Standard 7")" and replace it with the citation "(B)(27)" to properly cite the definition within the regulation.

Regulation 61-62.5, Standard No. 7.1, Section (B), Definitions:
Former Section (c) is recodified Section (B), and amended to revise codification and citations in alphanumeric order and to remove quotation marks from each defined term for consistency with other regulations throughout Regulation 61-62.

Regulation 61-62.5, Standard No. 7.1, Section (B), Definitions:
Paragraph (B) (former Paragraph (c)) is amended to strike all text after the title and replace with the phrase "For the purposes of this regulation:" for clarity.

Regulation 61-62.5, Standard No. 7.1, Section (B), Definitions:

Paragraphs (B)(2), (B)(4), and (B)(6) though (B)(19) are inserted in alpha-numeric order to add definitions for: "Allowable emissions", "Begin actual construction", "Building, structure, facility or installation", "Temporary clean coal technology demonstration project", "Clean coal technology", "Clean coal technology demonstration project", "Commence", "Construction", "Continuous emissions monitoring system (CEMS)", "Continuous emissions rate monitoring system (CERMS)", "Continuous parameter monitoring system (CPMS)", "Electric utility steam generating unit", "Emissions unit", "Federal Land Manager", "Federally enforceable", and "Fugitive emissions", to ensure consistency with federal regulations.

Regulation 61-62.5, Standard No. 7.1, Section (B), Definitions:
Former Paragraphs (c)(2) and (c)(3) are recodified as (B)(3) and (B)(5) respectively to reflect codification and formatting changes to Section (B).

Regulation 61-62.5, Standard No. 7.1, Section (B), Definitions:
Former Paragraph (c)(4) and the word "[Reserved]" are stricken to reflect codification and formatting changes to Section (B).

Regulation 61-62.5, Standard No. 7.1, Section (B), Definitions:
Former Paragraphs (c)(5) through (c)(7) are recodified as (B)(20) through (B)(22) to reflect codification and formatting changes to Section (B).

Regulation 61-62.5, Standard No. 7.1, Section (B), Definitions:
Former (c)(5)(B) is recodified (B)(20)(b), and amended to strike the word "permit" and add the word "allow" to ensure clarity, and amended in two instances to change the word "emissions" to "emission" to ensure consistency with federal regulations, and amended to replace "a stationary source" with "the stationary source" to ensure consistency with federal regulations.

Regulation 61-62.5, Standard No. 7.1, Section (B), Definitions:
Paragraph (B)(21)(c)(ii) is amended to replace "sections" with "Sections" for internal consistency.

Regulation 61-62.5, Standard No. 7.1, Section (B), Definitions:
Paragraph (B)(21)(c)(iii) is amended to replace "section" with "under Section" for clarity and internal consistency.

Regulation 61-62.5, Standard No. 7.1, Section (B), Definitions:
Former Paragraphs (c)(6)(C)(v)(a) and (c)(6)(C)(vi) are recodified (B)(21)(c)(v)(1) and (B)(21)(c)(vi), and amended to add the phrase "pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Part 51, Subpart I or 40 CFR 51.166" for clarity.

Regulation 61-62.5, Standard No. 7.1, Section (B), Definitions:
Paragraph (B)(21)(e) is added and reserved to reflect the stay of corresponding federal regulations.

Regulation 61-62.5, Standard No. 7.1, Section (B), Definitions:
Former (c)(7)(A) is recodified (B)(22)(a), and amended to strike the phrase "paragraphs (c)(7)(A)(i)(a) through (e) of this section." and replace it with "the following table:". Paragraph (B)(22)(a) is also amended to strike subparagraphs formerly codified (c)(7)(A)(a) through (c)(7)(A)(d) and replace the codified list with an expanded table format for increased comprehensiveness and ease of use. Paragraph (B)(22)(a) is also amended to replace "which" with "that" for correct grammar, and to replace "Act" with "Clean Air Act" for clarity.

Regulation 61-62.5, Standard No. 7.1, Section (B), Definitions:
Paragraph (B)(22)(c)(xxvii) is amended to replace "section" with "Section" for internal consistency.

Regulation 61-62.5, Standard No. 7.1, Section (B), Definitions:

Paragraph (B)(23) is inserted in alpha-numeric order to add the definition for "Necessary preconstruction approvals or permits", to ensure consistency with federal regulations.

Regulation 61-62.5, Standard No. 7.1, Section (B), Definitions:
Former Paragraphs (c)(8) and (c)(9) are recodified as Paragraphs (B)(24) and (B)(25) to reflect codification and formatting changes to Section (B).

Regulation 61-62.5, Standard No. 7.1, Section (B), Definitions:
Former (c)(8)(B) is recodified (B)(24)(b), and amended to strike the phrase "before the date that the increase from the particular change occurs;" and add the word "between:", and amended to add subparagraphs (i) through (ii) to clarify the timeframe for contemporaneous increases or decreases in actual emissions in the regulation's definition of net emissions increase.

Regulation 61-62.5, Standard No. 7.1, Section (B), Definitions:
Former Paragraph (c)(8)(C) is recodified (B)(24)(c) and amended to strike former subparagraph (c)(8)(C)(i), and amended to recodify former (c)(8)(C)(ii) as (B)(24)(c)(i), and amended to add "[Reserved]" to the newly codified subparagraph "(B)(24)(c)(ii)" to clarify the criteria for creditable emissions in the regulation's definition of net emissions increase.

Regulation 61-62.5, Standard No. 7.1, Section (B), Definitions:
Former Paragraph (c)(8)(D) is recodified (B)(24)(d), and amended to strike the period and replace with semicolon for consistency.

Regulation 61-62.5, Standard No. 7.1, Section (B), Definitions:
Former (c)(8)(E)(i) is recodified (B)(24)(e)(i), and amended to add an "s" to "emission" to read "actual emissions" and amended to add a comma to read "allowable emissions," for clarity and consistency with federal regulation.

Regulation 61-62.5, Standard No. 7.1, Section (B), Definitions:
Former (c)(8)(E)(ii) is recodified (B)(24)(e)(ii), and amended to strike the word "and" after the semicolon for correct codification.

Regulation 61-62.5, Standard No. 7.1, Section (B), Definitions:
Former (c)(8)(E)(iii) is recodified (B)(24)(e)(iii), and amended to add the phrase "under regulations approved pursuant to 40 CFR Part 51, Subpart I" for consistency with federal regulation, and to add the word "and" after the semicolon for correct codification.

Regulation 61-62.5, Standard No. 7.1, Section (B), Definitions:
Former (c)(8)(F) is recodified (B)(24)(f), and amended to strike the period at the end of the second sentence and replace with a semicolon for correct codification and internal consistency.

Regulation 61-62.5, Standard No. 7.1, Section (B), Definitions:
Former (c)(9) is recodified (B)(25), and amended to strike the lowercase word "appendix" and replace with "Appendix" for consistency.

Regulation 61-62.5, Standard No. 7.1, Section (B), Definitions:
Former Paragraph (c)(10) and the word "[Reserved]" are stricken to reflect codification and formatting changes to Section (B).

Regulation 61-62.5, Standard No. 7.1, Section (B), Definitions:
Paragraphs (B)(26) through (B)(30) are inserted in alphanumeric order to add definitions for: "Pollution prevention", "Potential to emit", "Predictive emissions monitoring system (PEMS)", "Prevention of Significant Deterioration (PSD) permit", and "Project", to ensure consistency with federal regulations.

Regulation 61-62.5, Standard No. 7.1, Section (B), Definitions:
Former (c)(11) is recodified as (B)(31) to reflect codification and formatting changes to Section (B).

Regulation 61-62.5, Standard No. 7.1, Section (B), Definitions:
Former (c)(11)(B)(iv) is recodified (B)(31)(b)(iv), and amended to strike the phrase "under paragraph (b)(37) of Standard 7" and add the phrase "in paragraph (B)(27) of this section" to properly cite the referenced definition within the regulation.

Regulation 61-62.5, Standard No. 7.1, Section (B), Definitions:
Former Paragraph (c)(12) is stricken in entirety to reflect the provision's recodification at (B)(29).

Regulation 61-62.5, Standard No. 7.1, Section (B), Definitions:
Former (c)(13) is recodified as (B)(32) to reflect codification and formatting changes to Section (B).

Regulation 61-62.5, Standard No. 7.1, Section (B), Definitions:
Former (c)(13)(C) is recodified (B)(32)(c), and amended to add the phrase "identified under this paragraph as" for consistency with federal regulations, and amended to strike the word "a" in "a constituent" and replace with the word "such" for clarity and consistency with federal regulations, and amended to strike former subparagraphs (c)(13)(C)(c) and (c)(13)(C)(d) for consistency with federal regulations.

Regulation 61-62.5, Standard No. 7.1, Section (B), Definitions:
Former (c)(13)(C)(b) is recodified (B)(32)(c)(ii), and amended to strike the phrase "is a precursor" and add a comma and the phrase "volatile organic compounds, nitrogen oxides, and ammonia are precursors" for consistency with federal regulations, and amended to strike the word "all" and replace with "any" and strike the "s" in "areas" for consistency with federal regulations, and amended to strike the semicolon at the end of the paragraph and replace with a period for correct codification.

Regulation 61-62.5, Standard No. 7.1, Section (B), Definitions:
Former (c)(13)(D) is recodified (B)(32)(d), and amended to add the phrase "nonattainment major NSR" for consistency with federal regulations.

Regulation 61-62.5, Standard No. 7.1, Section (B), Definitions:
Paragraphs (B)(33) through (B)(36) are inserted in alphanumeric order to add definitions for: "Replacement unit", "Resource recovery facility", "Reviewing authority", and "Secondary emissions", to ensure consistency with federal regulations.

Regulation 61-62.5, Standard No. 7.1, Section (B), Definitions:
Former Paragraphs (c)(14) and (c)(15) are recodified as (B)(37) and (B)(38) respectively to reflect codification and formatting changes to Section (B).

Regulation 61-62.5, Standard No. 7.1, Section (B), Definitions:
Former (c)(14) is recodified (B)(37), and amended to strike the word "as" and replace with the word "a" for consistency with federal regulations, and amended to strike the non-codified list titled "Pollutant Emission Rate" and replace the list with an expanded table format for comprehensiveness and ease of use.

Regulation 61-62.5, Standard No. 7.1, Section (B), Definitions:
Paragraph (B)(39) is inserted in alphanumeric order to add a definition for: "Stationary source", to ensure consistency with federal regulations.

Regulation 61-62.5, Standard No. 7.1, Section (B), Definitions:
Former Paragraph (c)(16) is recodified as (B)(40) to reflect codification and formatting changes to Section (B).

Regulation 61-62.5, Standard No. 7.1, Section (C), Permitting requirements:

Former Section (d) is recodified Section (C), and amended to revise codification and citations in alphanumeric order to ensure clarity and internal consistency. Former Paragraph (d) is stricken to reflect codification and formatting changes to Section (C).

Regulation 61-62.5, Standard No. 7.1, Section (C), Permitting requirements:
Former (d)(1) is recodified (C)(1), and amended to strike the phrase "Conditions for approval" and replace it with "Permitting requirements." Former Subparagraph (d)(1)(A) is recodified (C)(1)(a), and amended to identify the meaning of the acronym "LAER." Former Subparagraph (d)(1)(C) is recodified (C)(1)(c), and amended to strike the phrase "following provisions" and add the phrase "requirements in Section (D), Offset standards" to codify offset standard language into a separate section for clarity and usability. Former Subparagraphs (d)(1)(D) and (d)(1)(E) are recodified (C)(1)(d) and (C)(1)(e) and repositioned to follow in alphanumeric order after subparagraphs (C)(1)(a) through (C)(1)(c) for clarity and usability.

Regulation 61-62.5, Standard No. 7.1, Section (C), Permitting requirements:
Paragraph (C)(2) is added to read "Exemptions. Temporary emission sources, such as pilot plants and portable facilities which will be relocated outside of the nonattainment area after a short period of time, are exempt from the requirements of paragraphs (C)(1)(c) and (C)(1)(d) of this section." for consistency with federal regulations.

Regulation 61-62.5, Standard No. 7.1, Section (C), Permitting requirements:
Paragraph (C)(3) is added to read "Secondary emissions. Secondary emissions need not be considered in determining whether the stationary source or modification is major. However, if a source is subject to this regulation on the basis of the direct emissions from the source, the applicable conditions in paragraph (C)(1) must also be met for secondary emissions. However, secondary emissions may be exempt from paragraphs (C)(1)(a) and (C)(1)(b) of this section." for consistency with federal regulations.

Regulation 61-62.5, Standard No. 7.1, Section (C), Permitting requirements:
Paragraph (C)(4) is added to read "The requirements of this regulation applicable to major stationary sources and major modifications of PM_{10} shall also apply to major stationary sources and major modifications of PM_{10} precursors, except where the Administrator determines that such sources do not contribute significantly to PM_{10} levels that exceed the PM_{10} ambient standards in the area." for consistency with federal regulations.

Regulation 61-62.5, Standard No. 7.1, Section (D), Offset standards:
Section (D) is added, and titled "Offset standards." to incorporate language formerly codified (d)(1)(C)(i) thorough (d)(1)(C)(v)(a)(4)(A)(vii) and (d)(1)(C)(viii) and (d)(1)(C)(xi) into a separate section for clarity and usability. Revised codification and citations in alphanumeric order to ensure clarity and internal consistency.

Regulation 61-62.5, Standard No. 7.1, Section (D), Offset standards:
Paragraph (D)(1) is added to read "All emission reductions claimed as offset credit shall be permanent, quantifiable, federally enforceable and surplus;" for consistency with federal regulations.

Regulation 61-62.5, Standard No. 7.1, Section (D), Offset standards:
Former (d)(1)(C)(i) is recodified (D)(2), and amended to add the phrase "(as when a state has a single particulate emission limit for all fuels)" for consistency with federal regulations.

Regulation 61-62.5, Standard No. 7.1, Section (D), Offset standards:
Former (d)(1)(C)(ii) is recodified (D)(3), and amended to add an "s" to "emission" to read "emissions offset credit" for consistency with federal regulations.

Regulation 61-62.5, Standard No. 7.1, Section (D), Offset standards:
Former (d)(1)(C)(iii)(a) is recodified (D)(4), and amended to strike the phrase "if such reductions are permanent, quantifiable, federally enforceable, occurred on or after the date of the most recent emissions inventory, and if the area has an EPA-approved attainment plan" and add "for offsets if the shutdown or curtailment occurred

after the last day of the base year for the SIP planning process. For purposes of this paragraph, the Department may choose to consider a prior shutdown or curtailment to have occurred after the last day of the base year if the projected emissions inventory used to develop the attainment demonstration explicitly includes the emissions from such previously shutdown or curtailed emission units. No credit may be given for shutdowns that occurred before August 7, 1977." for consistency with federal regulations.

Regulation 61-62.5, Standard No. 7.1, Section (D), Offset standards:
Former (d)(1)(C)(iii)(b) is recodified (D)(5), and amended to strike the phrase "Such reductions may be credited if" and replace it with the phrase "Emissions reductions achieved by shutting down an existing emissions unit or curtailing production or operating hours and that do not meet the requirements on paragraph (D)(4) may be generally credited only if:" for consistency with federal regulations. The remainder of the paragraph is amended to divide the paragraph into subparagraphs (D)(5)(a) and (D)(5)(b) for consistency with federal regulation.

Regulation 61-62.5, Standard No. 7.1, Section (D), Offset standards:
Paragraph (D)(5)(a) is amended to strike the word "the" and replace with the word "The" at the beginning of the newly codified paragraph, and amended to strike the comma and replace with a semicolon to read "The shutdown or curtailment occurred on or after the date the new source permit application is filed; or," for consistency with federal regulation.

Regulation 61-62.5, Standard No. 7.1, Section (D), Offset standards:
Paragraph (D)(5)(b) is amended to strike the phrase "if the" and replace with the word "The" at the beginning of the newly codified paragraph, and amended to strike the phrase "cutoff date provision of paragraph (d)(C)(iii)(a) are observed" and replace with the phrase "emission reductions achieved by the shutdown or curtailment met the requirements of paragraph (D)(4)" to read "The applicant can establish that the proposed new source is a replacement for the shutdown or curtailed source, and the emission reductions achieved by the shutdown or curtailment met the requirements of paragraph (D)(4)." for consistency with federal regulation.

Regulation 61-62.5, Standard No. 7.1, Section (D), Offset standards:
Former Paragraph (d)(1)(C)(iv) is recodified (D)(6). Former Paragraph (d)(1)(C)(v) is stricken to reflect recodification at (D)(1). Former Paragraphs (d)(1)(C)(viii) and (d)(1)(C)(xi) are recodified (D)(7) and (D)(8) respectively and repositioned in alphanumeric order.

Regulation 61-62.5, Standard No. 7.1, Section (D), Offset standards:
Paragraph (D)(9) is added to read "If a designated nonattainment area is projected to be an attainment area as part of an approved SIP control strategy by the new source start-up date, offsets would not be required if the new source would not cause a new violation." for consistency with federal regulations.

Regulation 61-62.5, Standard No. 7.1, Section (D), Offset standards:
Former Paragraph (d)(1)(C)(v)(a) is recodified (D)(10), and amended to strike the phrase "Eligibility as Emission Offsets." for clarity, and amended to strike former subparagraphs (d)(1)(C)(v)(a)(1) and (d)(1)(C)(v)(a)(1)(A). Former subparagraph (d)(1)(C)(v)(a)(1)(B) is recodified (D)(11) for clarity.

Regulation 61-62.5, Standard No. 7.1, Section (D), Offset standards:
Former Paragraph (d)(1)(C)(v)(a)(2) is recodified (D)(12), and amended to strike subparagraphs (d)(1)(C)(v)(a)(2)(D) through (d)(1)(C)(v)(a)(2)(F) for clarity, and amended to recodify subparagraphs (A), (B), (C), and (G) in alphanumeric order as (D)(12)(a) through (D)(12)(d) for consistency in codification. Paragraph (D)(12) is amended to correct grammar and add the missing word "of". Paragraph (D)(12)(c) is amended to add "or" for clarity. Paragraph (D)(12)(d) is amended to add the word "federally" to read "real, permanent, quantifiable, federally enforceable, and surplus" for consistency with federal regulations.

Regulation 61-62.5, Standard No. 7.1, Section (D), Offset standards:
Former Paragraph (d)(1)(C)(v)(a)(3) is recodified as (D)(13).

Regulation 61-62.5, Standard No. 7.1, Section (D), Offset standards:
Former Paragraph (d)(1)(C)(v)(a)(4) is recodified (D)(14), and amended to add the phrase "emission reductions that are not considered surplus" from former subparagraph (d)(1)(C)(v)(a)(4)(A), and strike former subparagraph (d)(1)(C)(v)(a)(4)(A) for correct codification.

Regulation 61-62.5, Standard No. 7.1, Section (D), Offset standards:
Former Subparagraphs (d)(1)(C)(v)(a)(4)(A)(i) through (d)(1)(C)(v)(a)(4)(A)(vii) are recodified (D)(14)(a) through (D)(14)(g) for correct codification.

Regulation 61-62.5, Standard No. 7.1, Section (D), Offset standards:
Paragraphs (D)(14)(b) and (D)(14)(c) are amended for improved punctuation. Paragraph (D)(14)(c) is amended to strike the duplicate word "VOCs" to correct a typographical error, and amended to strike "CAA" and replace it with "Clean Air Act" to ensure clarity and internal consistency.

Regulation 61-62.5, Standard No. 7.1, Section (D), Offset standards:
Paragraphs (D)(14)(d), (D)(14)(e), and (D)(14)(g) are amended to add "Emission reductions from" to the beginning of each paragraph, for clarity and consistency. Paragraph (D)(14)(g) is amended to strike "notifying" and replace with "with notification" for clarity.

Regulation 61-62.5, Standard No. 7.1, Section (E), Calculation of Emission Offsets:
Former Paragraph (d)(1)(C)(v)(b) is recodified Section (E) to ensure clarity and internal consistency.

Regulation 61-62.5, Standard No. 7.1, Section (F), Location of offsetting emissions:
Former Paragraph (d)(1)(C)(vi) is recodified Section (F), and amended to codify (a) and (b) language into subparagraphs (F)(1) and (F)(2) for consistency with federal regulation and clarity.

Regulation 61-62.5, Standard No. 7.1, Section (G), Emission offsetting ratios:
Paragraph (d)(1)(C)(vii) is recodified Section (G).

Regulation 61-62.5, Standard No. 7.1, Section (G), Emission offsetting ratios:
Paragraph (d)(1)(C)(vii)(b) is recodified (G)(2), and amended to add the word "increases" to read "Emissions increases for ozone nonattainment areas shall" for clarity. The table is amended to strike "Subpart I" and ">1 to 1" for consistency with federal regulations.

Regulation 61-62.5, Standard No. 7.1, Section (G), Emission offsetting ratios:
Former paragraphs (d)(1)(C)(viii) through (d)(1)(E) are stricken for reorganization of regulatory text.

Regulation 61-62.5, Standard No. 7.1, Section (H), Interpollutant offsetting:
Section (H) is added to provide federal language on interpollutant offsetting, for consistency with federal regulations.

Regulation 61-62.5, Standard No. 7.1, Section (I), Banking of emission offsets:
Section (I) is added to provide language on banking of emission offsets for consistency with federal regulations.

Regulation 61-62.5, Standard No. 7.1, Section (J)
Section (J) is added in alphanumeric order, and the word "[Reserved]" is added.

Regulation 61-62.5, Standard No. 7.1, Section (K)
Section (K) is added in alphanumeric order, and the word "[Reserved]" is added.

Regulation 61-62.5, Standard No. 7.1, Section (L), Source obligation:
Section (L), title, is added to read "Source obligation." for clarity and usability.

Regulation 61-62.5, Standard No. 7.1, Section (L), Source obligation:
Former Paragraphs (d)(2)(A) through (d)(2)(D) are recodified (L)(1) through (L)(4) in alphanumeric order for consistency. Paragraph (L)(3) is amended to strike "plan" and replace with "State Implementation Plan" for clarity.

Regulation 61-62.5, Standard No. 7.1, Section (L), Source obligation:
Former Paragraph (d)(3) is recodified (L)(5), and amended to add the title phrase "Monitoring, Recordkeeping, and Reporting." for clarity and usability, and amended to strike the word "to" in "apply to" and replace it with the phrase "with respect to any regulated NSR pollutant emitted from" for consistency with federal regulations, and amended to add the phrase "of such pollutant" following the word "increase" for consistency with federal regulations.

Regulation 61-62.5, Standard No. 7.1, Section (L), Source obligation:
Paragraph (L)(5)(c) is added in alphanumeric order to read "If the emissions unit is an existing electric utility steam generating unit, before beginning actual construction, the owner or operator shall provide a copy of the information set out in paragraph (L)(5)(b) to the reviewing authority. Nothing in this paragraph shall be construed to require the owner or operator of such a unit to obtain any determination from the reviewing authority before beginning actual construction." for consistency with federal regulation.

Regulation 61-62.5, Standard No. 7.1, Section (L), Source obligation:
Paragraph (L)(6) is added in alphanumeric order to provide federal language on "reasonable possibility" for consistency with federal regulations. Revised language to ensure clarity and internal consistency.

Regulation 61-62.5, Standard No. 7.1, Section (L), Source obligation:
Former Paragraph (d)(4) is stricken, because this language pertains to PAL requirements, and is covered in the Actuals PALs section.

Regulation 61-62.5, Standard No. 7.1, Section (L), Source obligation:
Former Paragraph (d)(5) is recodified (L)(7) in alphanumeric order.

Regulation 61-62.5, Standard No. 7.1, Section (M), Public participation:
Section (M), title, added to read "Public participation." for clarity and usability.

Regulation 61-62.5, Standard No. 7.1, Section (M), Public participation:
Former Paragraph (d)(6) is recodified (M)(1), and amended to strike the phrase "Public Participation"

Regulation 61-62.5, Standard No. 7.1, Section (M), Public participation:
Former paragraph (d)(7) and subparagraphs (d)(7)(i) through (d)(7)(x) are recodified (M)(2) and subparagraphs (M)(2)(a) through (M)(2)(j). Amended throughout to strike the word "plant" and replace with the word "facility" for clarity and consistency. Revised language to ensure clarity and internal consistency and revised codification and citations in alphanumeric order.

Regulation 61-62.5, Standard No. 7.1, Section (M), Public participation:
Former (d)(7)(iii) is recodified (M)(2)(c), and amended to add the sentence "This requirement may be met by making these materials available at a physical location or on a public website identified by the Department." for consistency with federal regulation changes to public noticing methods.

Regulation 61-62.5, Standard No. 7.1, Section (M), Public participation:
Former (d)(7)(iv) is recodified (M)(2)(d), and amended to read "Notify the public, by posting the notice, for the duration of the public comment period, on a public website identified by the Department. This consistent noticing method shall be used for all draft permits subject to notice under this section. The public website notice shall include a notice of public comment including notice of the application, the preliminary determination, the degree of increment consumption that is expected from the source or modification, and the opportunity for comment at

a public hearing as well as written public comment. The public website notice shall also include the draft permit, information on how to access the administrative record for the draft permit and how to request and/or attend a public hearing on the draft permit. The Department may use additional means to provide adequate notice to the affected public, including by publishing the notice in a newspaper of general circulation in each region in which the proposed source or modification would be constructed (or in a state publication designed to give general public notice).” to define the Department’s consistent noticing method for public notice, for consistency with federal regulation changes to public noticing methods.

Regulation 61-62.5, Standard No. 7.1, Section (M), Public participation:
Former (d)(7)(vii) is recodified (M)(2)(g), and amended to strike the word “locations” and replace it with the phrase “location or on the same website” for consistency with federal regulation changes to public noticing methods.

Regulation 61-62.5, Standard No. 7.1, Section (M), Public participation:
Former (d)(7)(ix) is recodified (M)(2)(i), and amended to add the phrase “or on the same website” for consistency with federal regulation changes to public noticing methods.

Regulation 61-62.5, Standard No. 7.1, Former Section (e), Exemptions:
Former section (e) is stricken in its entirety for reorganization of regulatory text. Former reserved sections (f) through (h) are stricken in their entirety for clarity.

Regulation 61-62.5, Standard No. 7.1, Section (N), Actuals PALs:
Former section (i) is recodified (N) and amended to revise codification and citations in alphanumeric order. Section (N) is amended throughout to strike citations to Regulation 61-62.5 Standard 7, “Prevention of Significant Deterioration” and replace with citations within Regulation 61-62.5, Standard 7.1, for internal consistency and usability.

Regulation 61-62.5, Standard No. 7.1, Section (N), Actuals PALs:
Former (i)(1)(iii)(B) is recodified (N)(1)(c)(ii), and amended to correct the citation to Regulation 61-62.1, Section II, “Permit Requirements.”

Regulation 61-62.5, Standard No. 7.1, Section (N), Actuals PALs:
Former (i)(2)(i) is recodified (N)(2)(a), and amended to change the citation of “(c)(1)” to “(B)(3)” to correctly cite the definition of baseline actual emissions.

Regulation 61-62.5, Standard No. 7.1, Section (N), Actuals PALs:
Former (i)(2)(iv)(B) is recodified (N)(2)(d)(ii), and amended to strike “section” and replace it with “Section” for clarity and consistency.

Regulation 61-62.5, Standard No. 7.1, Section (N), Actuals PALs:
Former (i)(5) is recodified (N)(5), and amended to add the sentence “This includes the requirement that the Department provide the public with notice of the proposed approval of a PAL permit and at least a thirty (30)-day period for submittal of public comment.” for consistency with federal regulation.

Regulation 61-62.5, Standard No. 7.1, Section (N), Actuals PALs:
Former (i)(14)(i)(G) is recodified (N)(14)(a)(vii), and amended to strike the phrase “Title V Operating Permit Program” for clarity and consistency.

Regulation 61-62.5, Standard No. 7.1, Section (N), Actuals PALs:
Former (i)(14)(ii)(D) is recodified (N)(14)(b)(iv), and amended to strike the phrase “the applicable Title V operating permit program” and add the citation “Regulation 61-62.70” for clarity and consistency.

Regulation 61-62.5, Standard No. 7.1, Section (O):

Former Paragraph (j) is recodified (O) to ensure clarity and internal consistency.

Regulation 61-62.70, Title V Operating Permit Program

Regulation 61-62.70, Section 70.7, Permit issuance, renewal, reopening, and revisions:
Paragraph (h)(1) is amended to define the Department's consistent noticing method for public notice, for consistency with federal regulation changes to public noticing methods.

Instructions:

Amend Regulation 61-62, Air Pollution Control Regulations and Standards, in the South Carolina Code of Regulations pursuant to each instruction provided below with the text of the amendments.

Text:

61-62.1. Definitions and General Requirements.

SECTION I – DEFINITIONS

The following words and phrases when used in the Regulations and Standards shall, for the purpose of these regulations, have the meanings respectively ascribed to them in this section, unless a different meaning is clearly indicated. This section augments the South Carolina Pollution Control Act.

(1) Acid Mist – Means mist or droplets of sulfuric or other acids. Sulfuric acid mist includes sulfur trioxide (SO_3) and sulfuric acid vapor as well as liquid mist.

(2) Add – Means additions to a process which will increase size, scope, or emissions from such process.

(3) Administrator – Means the Administrator of the United States Environmental Protection Agency (EPA) or his/her designee.

(4) Afterburner – Means an auxiliary burner for destroying unburned or partially burned combustion gases after they have passed from the combustion chamber.

(5) Air Curtain Incinerator – Means an incinerator that operates by forcefully projecting a curtain of air across an open chamber or pit in which burning occurs. Incinerators of this type can be constructed above or below ground and require a refractory lined chamber or pit.

(6) Alter – Means modification or change in a process or processes which would affect emissions to the atmosphere.

(7) Ambient Air Quality Standards – Means the standard for the quality of ambient air at or beyond a property line on which a source of pollution is emitting.

(8) Application – Means a form provided by the Department which is prescribed to provide the information required to grant approval to construct and operate a source or an incinerator; or to report an existing incinerator.

(9) Biologicals – Means 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.

(10) Blood Products – Means any product derived from human blood, including but not limited to blood plasma, platelets, red or white blood corpuscles, and other derived licensed products, such as interferon, etc.

(11) Board – Means Board of Health and Environmental Control.

(12) Body Fluids – Means liquid emanating or derived from humans and limited to blood; dialysate; amniotic, cerebrospinal, synovial, pleural, peritoneal, and pericardial fluids; and semen and vaginal secretions.

(13) Boiler – Means an enclosed device using controlled flame combustion and having specific characteristics including the following:

(a) The combustion chamber and primary energy recovery section shall be of integral design (for example, waste heat recovery boilers attached to incinerators are not boilers). To be of integral design, the combustion chamber and the primary energy recovery sections (such as water walls and super heaters) shall be physically formed into one (1) manufactured or assembled unit. A unit in which the combustion chamber and the primary energy recovery sections are joined only by ducts or connections carrying flue gas is not integrally designed; however, secondary energy recovery equipment (such as economizers or air preheaters) need not physically be formed into the same unit as the combustion chamber and the primary energy recovery section. The following units are not precluded from boilers solely because they are not of integral design: process heaters (units that transfer energy directly to a process stream) and fluidized bed combustion units; and

(b) At least seventy-five (75) percent of recovered energy shall be "exported," for example, not used for internal uses like preheating of combustion air or fuel, or driving combustion air fans or feedwater pumps.

(14) Bypass Stack – Means a device used for discharging combustion gases to avoid severe damage to the air pollution control device or other equipment.

(15) CAA – Means the Clean Air Act, as amended, 42 U.S.C. 7401, et seq. Also referred to as "the Act."

(16) Chemotherapeutic Waste – Means all waste resulting from the production or use of antineoplastic agents used for the purpose of stopping or reversing the growth of malignant cells. Chemotherapeutic waste shall not include any waste containing antineoplastic agents that are listed as hazardous waste under Section 261 of Regulation 61-79, Hazardous Waste Management.

(17) Clean Wood – Means untreated wood or untreated wood products including clean untreated lumber, tree stumps (whole or chipped), and tree limbs (whole or chipped). Clean wood does not include yard waste, which is defined elsewhere in this section, or construction, renovation, and demolition waste (including but not limited to railroad ties and telephone poles).

(18) Code of Federal Regulations (CFR) – Means the general and permanent rules codified and published in the Federal Register by the departments and agencies of the federal government.

(19) Commercial Incinerator – Means an incinerator that burns non-hazardous waste from commercial activities with a design capacity of no more than 1250 pounds per hour (lb/hr) and which burns no more than six (6) tons per day (tons/day). Incinerators of this type not meeting these limits are considered municipal waste combustors. This definition does not include retail and industrial incinerators nor does it include waste from maintenance activities at commercial establishments.

(20) Commissioner – Means the Commissioner (also known as the Director) of the Department of Health and Environmental Control.

(21) Conditional Major Source – Means a stationary source that obtains a federally enforceable physical or operational limitation from the Department to limit or cap the stationary source's potential to emit to avoid being defined as a major source as defined by applicable federal and state regulations.

(22) Continuous Emission Monitoring System or CEMS – Means a monitoring system for continuously measuring and recording the emissions of a pollutant from an affected facility.

(23) Continuous Program of Physical On-site Construction – Means significant and continuous site preparation work such as major clearing or excavation followed by placement of footings, pilings, and other materials of construction, assembly, or installation of unique facilities or equipment at the site of the source. With respect to a change in the method of operating, this term refers to those on-site activities, other than preparatory activities, which mark the initiation of the change.

(24) Crematory Incinerator – Means any incinerator designed and used solely for the burning of human remains or animal remains.

(25) Department – Means the South Carolina Department of Health and Environmental Control.

(26) Dioxins/Furans – Means the combined emissions of tetra- through octa-chlorinated dibenzo-paradioxins and dibenzofurans, as measured by EPA Reference Method 23 (40 CFR Part 60, Appendix A).

(27) Emission – Means a release or discharge to the outdoor (ambient) atmosphere of air contaminants, including fugitive emissions.

(28) Emission Data – Means the definition contained in 40 CFR 2.301(a)(2), July 1, 1986, is incorporated by reference.

(29) Emission Limitation (and Emission Standard) – Means a requirement established by the state or by the Administrator which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirements which limit the level of opacity, prescribe equipment, set fuel specifications, or prescribe operation or maintenance procedures for a source to assure continuous emission reduction.

(30) Federally Enforceable – Means all limitations and conditions which are enforceable by the Administrator and citizens under the Act, including those requirements developed pursuant to 40 CFR Parts 60, 61, 63, and 70; requirements within the South Carolina State Implementation Plan (SIP); and any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Part 51 Subpart I, including operating permits issued under an EPA-approved program that is incorporated into the SIP and expressly requires adherence to any permit issued under such program.

(31) Fuel Burning Operation – Means use of a furnace, boiler, device, or mechanism used principally, but not exclusively, to burn any fuel for the purpose of indirect heating in which the material being heated is not contacted by and adds no substance to the products of combustion.

(32) Fugitive Dust – Means a type of particulate emission that becomes airborne by forces of wind, man's activity, or both, including, but not limited to, construction sites, tilled land, materials storage piles, and materials handling.

(33) Fugitive Emissions – Means emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(34) Garbage – Means animal and vegetable waste resulting from the handling, preparation, cooking, and serving of foods.

(35) Hazardous Air Pollutant (HAP) – Means a pollutant which is the subject of National Emission Standards for Hazardous Air Pollutants (NESHAP) promulgated by the EPA by publication in the Federal Register.

(36) Hazardous Waste – Means any waste identified as such by Regulation 61-79.

(37) Hazardous Waste Fuel – Means hazardous waste that has a heat value greater than 5000 British thermal unit per pound (Btu/lb) and is burned in an industrial or utility boiler or industrial furnace for energy recovery, except for hazardous wastes exempted by Section 266.30(b) of Regulation 61-79.

(38) Hazardous Waste Incinerator – Means an incinerator whose primary function is to combust hazardous waste, except for devices which have qualified for exemption as provided in Sections 264.340(b) or 265.340(b) of Regulation 61-79.

(39) Hospital – Means any facility which has an organized medical staff, maintains at least six (6) 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 twenty-four (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.

(40) Hospital/Medical/Infectious Waste Incinerator or HMIWI or HMIWI Unit – Means any device that combusts any amount of hospital waste and/or medical/infectious waste.

(41) Hospital Waste – Means 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.

(42) Incinerator – Means any engineered device used in the process of controlled combustion of waste for the purpose of reducing the volume; removing the contamination and/or reducing or removing the hazardous potential of the waste charged by destroying combustible matter leaving the noncombustible ashes, material, and/or residue; and which does not meet the criteria nor classification as a boiler nor is listed as an industrial furnace.

(43) Industrial Boiler – Means a boiler that produces steam, heated air, or other heated fluids for use in a manufacturing process.

(44) Industrial Furnace – Means any of the following enclosed devices that are integral components of manufacturing processes and that use controlled flame devices to accomplish recovery of materials or energy:

(a) Cement kilns

(b) Lime kilns

(c) Aggregate kilns

(d) Phosphate kilns

(e) Coke ovens

(f) Blast furnaces

(g) Smelting, melting, and refining furnaces (including pyrometallurgical devices such as tray furnaces, cupolas, reverberator furnaces, sintering machines, roasters, and foundry furnaces)

(h) Titanium dioxide chloride process oxidation reactors

(i) Methane reforming furnaces

(j) Pulping liquor recovery furnaces

(k) Combustion devices used in the recovery of sulfur values from spent sulfuric acid

(l) Such other devices as the Department may determine on a case-by-case basis using one (1) or more of the following factors:

(i) The design and use of the device primarily to accomplish recovery of material products;

(ii) The use of the device to burn or reduce raw materials to make a material product;

(iii) The use of the device to burn or reduce secondary materials as effective substitutes for raw materials in processes using raw materials as principal feedstocks;

(iv) The use of the device to burn or reduce secondary materials as ingredients in an industrial process to make a material product;

(v) The use of the device in common industrial practice to produce a material product; and

(vi) Other factors as appropriate.

(45) Industrial Incinerator – Means any incinerator utilized in an industrial plant that does not meet the definition for any other type of incinerator or an incinerator used to combust Type 5 or 6 waste at any site.

(46) In Existence – Means that the owner or operator has obtained all necessary construction permits required by this Department and either has:

(a) Begun, or caused to begin, a continuous program of physical on-site construction of the source; or

(b) Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of construction of the source to be completed in a reasonable time, or that the owner or operator possesses a valid operating permit for the source prior to the effective date of a regulation or standard.

(47) Kraft Pulp Mill – Means any stationary source which produces pulp from wood by cooking (digesting) wood chips in a water solution of sodium hydroxide and sodium sulfide (white liquor) at a high temperature and pressure. Regeneration of the cooking chemicals through a recovery process is also considered part of the kraft pulp mill.

(48) Major Source – Means, except as otherwise provided, any source which directly emits, or has the potential to emit, greater than or equal to the major source threshold as defined by applicable federal and state regulations.

(49) Malfunction – Means 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.

(50) Mass Emission Rate – Means the weight discharged per unit of time.

(51) Medical/Infectious Waste – Means 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 Regulation 61-105, Infectious Waste Management. The definition of medical/infectious waste does not include hazardous waste identified or listed in Regulation 61-79.261; household waste, as defined in Regulation 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 Regulation 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, 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.

(52) Multiple-Chamber Incinerator – Means an incinerator consisting of at least two (2) refractory lined combustion chambers (primary and secondary) in series, physically separated by refractory walls, interconnected by gas passage ports or ducts.

(53) Municipal Solid Waste, MSW, or Municipal-type Solid Waste – (a) Means household, commercial/retail, and/or institutional waste. Household waste includes material discarded by single and multiple residential dwellings, hotels, motels, and other similar permanent or temporary housing establishments or facilities. Commercial/retail waste includes material discarded by stores, offices, restaurants, warehouses,

nonmanufacturing activities at industrial facilities, and other similar establishments or facilities. Institutional waste includes material discarded by schools, nonmedical waste discarded by hospitals, material discarded by nonmanufacturing activities at prisons and government facilities, and material discarded by other similar establishments or facilities. Household, commercial/retail, and institutional wastes include:

(i) Yard waste;

(ii) Refuse-derived fuel; and

(iii) Motor vehicle maintenance materials limited to vehicle batteries and tires.

(b) Household, commercial/retail, and institutional waste (MSW) does not include used oil; sewage sludge; wood pallets; construction, renovation, and demolition wastes (which includes, but is not limited to, railroad ties and telephone poles); clean wood; industrial process or manufacturing wastes (including Type 5 or 6 waste); medical waste; radioactive contaminated waste; hazardous waste; or motor vehicles (including motor vehicle parts or vehicle fluff).

(54) Municipal Waste Combustor, MWC, or Municipal Waste Combustor Unit – Means any setting or equipment that combusts solid, liquid, or gasified municipal solid waste including, but not limited to, field-erected incinerators (with or without heat recovery), modular incinerators (starved-air or excess-air), boilers (for example, steam generating units) and furnaces (whether suspension-fired, grate-fired, mass-fired, or fluidized bed-fired, etc.), air curtain incinerators, and pyrolysis/combustion units. Municipal waste combustors do not include pyrolysis/combustion units located at plastics/rubber recycling units. Municipal waste combustors do not include internal combustion engines, gas turbines, or other combustion devices that combust landfill gases collected by landfill gas collection systems. For the purpose of determining reconstruction or modification, as defined in 40 CFR Part 60 Subpart A, or Regulation 62.5, Standard No. 3, to a municipal waste combustor, the following applies:

(a) The boundaries of a municipal solid waste combustor are defined as follows. The municipal waste combustor unit includes, but is not limited to, the municipal solid waste fuel feed system, grate system, flue gas system, bottom ash system, and the combustor water system. The municipal waste combustor boundary starts at the municipal solid waste pit or hopper and extends through:

(i) The combustor flue gas system, which ends immediately following the heat recovery equipment or, if there is no heat recovery equipment, immediately following the combustion chamber;

(ii) The combustor bottom ash system, which ends at the truck loading station or similar ash handling equipment that transfers the ash to final disposal, including all ash handling systems that are connected to the bottom ash handling system; and

(iii) The combustor water system, which starts at the feed water pump and ends at the piping exiting the steam drum or superheater.

(b) The municipal waste combustor unit does not include air pollution control equipment, the stack, water treatment equipment, or the turbine-generator set.

(55) NAICS Code – Means North American Industry Classification System (NAICS) Code, a six (6) digit coding system, which attempts to classify all business establishments by the types of products or services they provide.

(56) Non-Industrial Boiler – Means any boiler not classified as an industrial boiler.

(57) Non-Industrial Furnace – Means any furnace not classified as an industrial furnace.

(58) Non-Spec. Oil (Off-Spec. Oil) – See definition of used oil.

(59) Opacity – Means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

(60) Open Burning – Means any fire or smoke-producing process which is not conducted in any boiler plant, furnace, high temperature processing unit, incinerator or flare, or in any other such equipment primarily designed for the combustion of fuel or waste material.

(61) Part 70 Permit – Means any permit or group of permits covering a source subject to the permitting requirements of Regulation 61-62.70. The use of the term "Title V Permit" shall be construed to mean "Part 70 Permit."

(62) Particulate Matter – Means any material, except uncombined water, that exists in a finely divided form as a liquid or solid at standard conditions.

(63) Particulate Matter Emissions – Means all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by an applicable reference method described in 40 CFR Part 60, July 1, 1987, or an equivalent or alternative method approved by the Department, with the concurrence of the EPA.

(64) Pathological Waste – Means 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).

(65) Plant – Means, except as otherwise provided, any stationary source or combination of stationary sources, which is located on one (1) or more contiguous or adjacent properties and owned or operated by the same person(s) under common control.

(66) Plastics/Rubber Recycling Unit – Means an integrated processing unit where plastics, rubber, and/or rubber tires are the only feed materials (incidental contaminants may be included in the feed materials) and they are processed into a chemical plant feedstock or petroleum refinery feedstock where the feedstock is marketed to and used by a chemical plant or petroleum refinery as input feedstock. The combined weight of the chemical plant feedstock and petroleum refinery feedstock produced by the plastics/rubber recycling unit on a calendar quarter basis shall be more than seventy (70) percent of the combined weight of the plastics, rubber, and rubber tires processed by the plastics/rubber recycling unit on a calendar quarter basis. The plastics, rubber, and/or rubber tire feed materials to the plastics/rubber recycling unit may originate from the separation or diversion of plastics, rubber, or rubber tires from MSW or industrial solid waste; and may include manufacturing scraps, trimmings, off-specification plastics, rubber, and rubber tire discards. The plastics, rubber, and rubber tire feed materials to the plastics/rubber recycling unit may contain incidental contaminants (for example, paper labels on plastic bottles, metal rings on plastic bottle caps, etc.).

(67) $PM_{2.5}$ – Means particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers emitted to the ambient air as measured by a reference method based on Appendix L of 40 CFR Part 50 and designated in accordance with 40 CFR Part 53 or by an equivalent method designated in accordance with 40 CFR Part 53.

(68) $PM_{2.5}$ Emissions – Means finely divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers emitted to the ambient air as measured by a reference method approved by the Department with concurrence of the EPA.

(69) PM_{10} – Means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by a reference method based on Appendix J of 40 CFR Part 50 and designated in accordance with 40 CFR Part 53 or by an equivalent method designated in accordance with 40 CFR Part 53.

(70) PM_{10} Emissions – Means finely divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal 10 micrometers emitted to the ambient air as measured by a reference method approved by the Department with concurrence of the EPA.

(71) Potential to Emit – Means the maximum capacity of a source to emit a regulated pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a regulated pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a source.

(72) Process Industry – Means any source engaged in the manufacture, processing, handling, treatment, forming, storing, or any other action upon materials except fuel-burning operations.

(73) Process Weight – Means the total weight of all materials introduced into a source operation, including air and water where these materials become an integral part of the product and solids used as fuels, but excluding liquids and gases used solely as fuels.

(74) Process Weight Rate – (a) Means a rate established as follows:

(i) For continuous or long-run steady-state source operations, the total process weight for the entire period of continuous operation or for a typical portion thereof, divided by the number of hours of such period or portion thereof.

(ii) For cyclical or batch unit operations or unit processes, the total process weight for a period that covers a complete operation or an integral number of cycles, divided by the hours of actual process operation during such a period.

(b) Where the nature of any process or operation or the design of any equipment is such as to permit more than one interpretation of this definition, the interpretation that results in the minimum value for allowable emission shall apply.

(75) Pyrolysis/Combustion Unit – Means a unit that produces gases, liquids, or solids through the heating of waste; and the gases, liquids, or solids produced are combusted and emissions vented to the atmosphere.

(76) Refuse – Means garbage, rubbish, and/or trade waste.

(77) Refuse-derived Fuel – Means a type of municipal solid waste produced by processing municipal solid waste through shredding and size classification. This includes all classes of refuse-derived fuel including low-density fluff refuse-derived fuel through densified refuse-derived fuel and pelletized refuse-derived fuel.

(78) Retail Business Type Incinerator – Means an incinerator that combusts waste typical of a retail business rather than domestic, commercial, or industrial activities.

(79) Rubbish – Means solid wastes from residences and dwellings, commercial establishments, and institutions.

(80) Salvage Operations – Means any operation of a business, trade, or industry engaged in whole or in part in salvaging or reclaiming any product or material including, but not limited to, metals, chemicals, shipping containers, drums, or automobiles.

(81) Secondary Emissions – Means emissions which would occur as a result of the construction or operation of a major source or major modification but do not come from the major source or major modification itself. Secondary emissions shall be specific, well defined, quantifiable, and shall impact the same general area as the source or modification which causes the secondary emissions. Secondary emissions may include, but are not limited to:

(a) Emissions from ships or trains moving to or from the new or modified source.

(b) Emissions from any offsite support operation which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major source or major modification.

(82) SIC Code – Means Standard Industrial Classification Codes which are four digit numerical codes designed by the U.S. Department of Labor in order to create uniform descriptions of business establishments.

(83) Sludge Incinerator – Means an incinerator that combusts wastes containing more than ten (10) percent (dry weight basis) sludge produced by municipal or industrial wastewater treatment plants or each incinerator that charges more than 2205 pounds per day (lb/day) (dry weight basis) of sludge produced by municipal or industrial wastewater treatment plants.

(84) Smoke – Means small gasborne and airborne particles arising from a process of combustion in sufficient number to be observable by a person of normal vision under normal conditions.

(85) Solid Fuel – Means a fuel which is fired as a solid such as coal, lignite, and wood.

(86) Spec. Oil – See definition of used oil.

(87) Stack – Means any flue, conduit, chimney, or opening arranged to conduct an effluent into the open air.

(88) Stack Height – Means the vertical distance measured in feet between the point of discharge from the stack or chimney into the outdoor atmosphere and the elevation of the land thereunder.

(89) Standard Conditions – Means 760 millimeters of mercury (mmHg) at twenty-five (25) degrees Centigrade (C).

(90) Stationary Source – Means any building, structure, installation, or process which emits or may emit an air pollutant subject to regulation by any national or state standard. Use of the term “source” is to be construed to mean “stationary source.”

(91) Substantial Loss – Means, generally, a loss which would equal or exceed ten (10) percent of the total initial project cost.

(92) Synthetic Minor Source – Means a stationary source that obtains a federally enforceable physical or operational limitation from the Department to limit or cap the stationary source’s potential to emit to avoid being defined as a major source or major modification, as defined by applicable federal and state regulations.

(93) Total Reduced Sulfur (TRS) – Means the sum of the sulfur compounds hydrogen sulfide, methyl mercaptan, dimethyl sulfide, and dimethyl disulfide that are released during the kraft pulping operation.

(94) Total Suspended Particulate (TSP) – Means particulate matter as measured by the method described in Appendix B, 40 CFR Part 50, July 1, 1987.

(95) Trade Waste – Means all solid, liquid, or gaseous material or rubbish resulting from construction, building operations, or the prosecution of any business, trade, or industry including, but not limited to, plastic products, cartons, paint, grease, oil and other petroleum products, chemicals, and cinders.

(96) Untreated Lumber – Means wood or wood products that have been cut or shaped and include wet, air-dried, and kiln-dried wood products. Untreated lumber does not include wood products that have been painted, pigment-stained, or "pressure-treated." Pressure-treating compounds include, but are not limited to, chromate copper arsenate, pentachlorophenol, and creosote.

(97) Used Oil – Means any oil that has been refined from crude or synthetic oil and as a result of use, storage, or handling, has become unsuitable for its original purpose due to the presence of impurities or loss of original properties, but which may be suitable for further use and may be economically recyclable. This also includes absorbent material contaminated with used oil such as oily rags or absorbent blankets. Two (2) types of used oil are defined as follows:

(a) Spec. Oil (Specification Oil) – Used oil that meets the following specifications: *

(i) Arsenic – 5 parts per million (ppm) maximum;

(ii) Cadmium – 2 ppm maximum;

(iii) Chromium – 10 ppm maximum;

(iv) Lead – 100 ppm maximum;

(v) Total halogens – 4000 ppm maximum; and**

(vi) Flash Point – 100 degrees Fahrenheit (F) (37.8 degrees C) minimum.

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* This specification does not apply to used oil fuel mixed with a hazardous waste.

** Used oil containing more than 1000 ppm total halogens is presumed to be a hazardous waste. The burden of proof that this is not true rests with the user.

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(b) Non-Spec. Oil (Off-Spec. Oil) – Used oil that does not meet the specification above.

(98) Utility Boiler – Means a boiler that produces steam, heated air, or other heated fluids for sale or for use in producing electric power for sale.

(99) Virgin Fuel – Means unused solid, liquid, or gaseous commercial fuel, and clean wood or bark that has not been processed other than for size reduction excluding clean wood or bark burned in an air curtain incinerator.

(100) Volatile Organic Compound (VOC) – (a) Means any organic compound which participates in atmospheric photochemical reactions; or which is measured by a reference method (as specified in 40 CFR Part 60, as of July 1, 1990), an equivalent method, an alternative method, or which is determined by procedures specified under any subpart of 40 CFR Part 60. This definition does not include compounds that have negligible

photochemical reactivity according to the methods employed by the EPA to determine compounds listed in 40 CFR 51.100(s).

(b) For purposes of determining compliance with emission limits, VOCs will be measured by the approved test methods. Where such a method also inadvertently measures compounds with negligible photochemical reactivity, an owner or operator may exclude these negligibly reactive compounds when determining compliance with an emissions standard.

(101) Waste – Means any discarded material including, but not limited to, used oil, hazardous waste fuel, hazardous waste, medical waste, municipal solid waste (MSW), sludge, waste fuel, and waste classification Types 0 through 6 or any material which as a result of use, storage, or handling has become unsuitable for its original purpose due to the presence of impurities or loss of original properties.

(a) Type 0 – Trash, a mixture of highly combustible waste such as paper, cardboard, wood boxes, and combustible floor sweepings from commercial and industrial activities. The mixture contains up to ten (10) percent by weight of plastic bags, coated paper, laminated paper, treated corrugated cardboard, oily rags, and plastic or rubber scraps.

Typical composition: ten (10) percent moisture, five (5) percent incombustible solids, and has a heating value of approximately 8500 Btu/lb as fired.

(b) Type 1 – Rubbish, a mixture of combustible waste such as paper, cardboard cartons, wood scrap, foliage, and combustible floor sweepings from domestic, commercial, and industrial activities. The mixture contains up to twenty (20) percent by weight of restaurant or cafeteria waste, but contains little or no treated paper, plastic, or rubber wastes.

Typical composition: twenty-five (25) percent moisture, ten (10) percent incombustible solids, and has a heating value of approximately 6500 Btu/lb as fired.

(c) Type 2 – Refuse, consisting of an approximately even mixture of rubbish and garbage by weight. This type of waste is common to apartment and residential occupancy.

Typical composition: up to fifty (50) percent moisture, seven (7) percent incombustible solids, and has a heating value of approximately 4300 Btu/lb as fired.

(d) Type 3 – Garbage, consisting of animal and vegetable wastes from restaurants, cafeterias, hotels, hospitals, markets, and like installations.

Typical composition: up to seventy (70) percent moisture, up to five (5) percent incombustible solids, and has a heating value of approximately 2500 Btu/lb as fired.

(e) Type 4 – Human and animal remains, consisting of carcasses, organs, and solid organic wastes from hospitals, laboratories, abattoirs, animal pounds, and similar sources.

Typical composition: up to eighty-five (85) percent moisture, five (5) percent incombustible solids, and having a heating value of approximately 1000 Btu/lb as fired.

(f) Type 5 – By-product waste, gaseous, liquid, or semi-liquid, such as tar, paints, solvents, sludge, fumes, etc., from industrial operations. Btu values shall be determined by the individual materials to be destroyed.

(g) Type 6 – Solid by-product waste, such as rubber, plastics, wood waste, etc., from industrial operations. Btu values shall be determined by the individual materials to be destroyed.

(102) Waste Fuel – Means waste that does not meet hazardous waste criteria but has a heat value greater than 5000 Btu /lb.

(103) Yard Waste – Means grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs that are generated by residential, commercial/retail, institutional, and/or industrial sources as part of maintenance activities associated with yards or other private or public lands. Yard waste does not include construction, renovation, and demolition wastes, which are exempt from the definition of MSW in this section. Yard waste does not include clean wood, which is also exempt from the definition of MSW in this section.

SECTION II – PERMIT REQUIREMENTS

The following regulation will not supersede any state or federal requirements nor special permit conditions, unless this regulation would impose a more restrictive emission limit. The owner or operator shall comply with all terms, conditions, and limitations of any Department-issued permit for sources or activities at the owner or operator's facility. A source's permit status may change upon promulgation of new regulatory requirements.

(A) Construction Permits

(1) Applicability

(a) Except as allowed under Section II(A)(1)(b) and (A)(1)(c) below, any person who plans to construct, alter, or add to a source of air contaminants, including installation of any device for the control of air contaminant discharges, shall first obtain a construction permit from the Department prior to commencement of construction.

(b) The Department may grant permission to proceed with minor alterations or additions without issuance of a construction permit when the Department determines that the alteration or addition will not increase the quantity and will not alter the character of the source's emissions.

(c) The owners or operators of sources not requesting to use federally enforceable construction permit conditions to limit potential to emit, sources not subject to regulations with more stringent start of construction limitations, or sources not otherwise exempt from permit requirements, may undertake the following on-site activities prior to obtaining a construction permit:

(i) Planning;
(ii) Engineering and design;
(iii) Geotechnical investigation;
(iv) Site land clearing and grading;
(v) Setting up temporary trailers to house construction staff and contractor personnel;
(vi) Ordering of equipment and materials;
(vii) Receipt and storing of equipment;
(viii) Pouring of the foundation up to and including the mounting pads and slab on grade;
(ix) Relocation of utilities;
(x) For existing sources, relocation/installation of piping, electrical service, and instrumentation;
(xi) Temporary power for the site (such as power lines);
(xii) Site drainage including ditches and culverts;
(xiii) Temporary dewatering activities associated with the excavations;
(xiv) Temporary gravel (Right Out of Crusher (ROC)) road beds for the site;
(xv) Soil only excavations;
(xvi) Temporary telecommunications for the site (such as telephone and internet); and
(xvii) Security fencing related to the storage of equipment and materials.

(d) In the event that the source does not qualify for issuance of a construction permit, the owners or operators accept the financial risk of commencing the activities listed in Section II(A)(1)(c)(i) through (A)(1)(c)(xvii) above.

(2) No permit to construct or modify a source will be issued if emissions interfere with attainment or maintenance of any state or federal standard.

(3) The owner or operator shall submit written notification to the Department of the date construction is commenced, postmarked within thirty (30) days after such date, and written notification of the actual date of initial startup of each new or altered source, postmarked within fifteen (15) days after such date.

(4) Approval to construct shall become invalid if construction:

(a) Is not commenced within eighteen (18) months after receipt of such approval;

(b) Is discontinued for a period of eighteen (18) months or more; or

(c) Is not completed within a reasonable time as deemed by the Department.

(5) The Department may extend the construction permit for an additional 18-month period upon a satisfactory showing that an extension is justified. This provision does not apply to the time period between construction of the approved phases of a phased construction project; each phase must commence construction within eighteen (18) months of the projected and approved commencement date.

(B) Exemptions from the Requirement to Obtain a Construction Permit

(1) No construction permits shall be required for the sources listed in Section II(B)(1)(a) through (B)(1)(c) below, which burn virgin fuel and which were constructed prior to February 11, 1971, and which are not located at a facility that meets the definition of a major source as defined in Regulation 61-62.70.2(r); however, modifications at these facilities may trigger the requirement to obtain a construction permit.

(a) Natural gas boilers.

(b) Oil-fired boilers of 50 million British thermal unit per hour (Btu/hr) rated input capacity or smaller.

(c) Coal-fired boilers of 20 million Btu/hr rated input capacity or smaller.

(2) No construction permits shall be required for the sources listed in Section II(B)(2)(a) through (B)(2)(h) below, unless otherwise specified by Regulation 61-62.70 or any other state or federal requirement. A source's exemption status may change upon the promulgation of new regulatory requirements applicable to any of the sources listed in Section II(B)(2)(a) through (B)(2)(g), or to any other sources that have been determined to have total uncontrolled emissions less than the thresholds in Section II(B)(2)(h), or to any similar sources that have been granted an exemption by the Department.

(a) Boilers and space heaters of less than 1.5 million Btu/hr rated input capacity which burn only virgin liquid fuels or virgin solid fuels.

(b) Boilers and space heaters of less than 10 million Btu/hr rated input capacity which burn only virgin gas fuels.

(c) Comfort air-conditioning or ventilation systems.

(d) Motor vehicles.

(e) Laboratory hoods.

(f) Emergency power generators as described below:

(i) Generators of less than or equal to 150 kilowatt (kW) rated capacity.

(ii) Generators of greater than 150 kW rated capacity designated for emergency use only and are operated a total of 500 hours per year or less for testing and maintenance and have a method to record the actual hours of use such as an hour meter.

(g) Sources emitting only steam, air, nitrogen, oxygen, carbon dioxide, or any physical combination of these.

(h) Sources with a total uncontrolled potential to emit (PTE) of less than five (5) tons per year each of particulates, sulfur dioxide, nitrogen oxides, and carbon monoxide; and a total uncontrolled PTE of less than 1000 pounds per month (lbs/month) of VOCs will not require construction permits. Unless otherwise exempt, sources may be exempted under this section at higher emission levels if there is a demonstration that there are no applicable limits or requirements. These applicable requirements include federally applicable limits or requirements. However, these sources may be required to be included in any subsequent construction or operating permit review to ensure that there is no cause or contribution to an exceedance of any ambient air quality standard or limit. For toxic air pollutant exemptions, refer to Regulation 61-62.5, Standard No. 8. Emissions calculations and any other information necessary to document qualification for this exemption must be maintained onsite and provided to the Department upon request.

(3) The Department will place the exempt sources listed in Section II(B)(2)(a) through (B)(2)(g) above, and other sources that have been determined will not interfere with the attainment or maintenance of any state or federal standard, on a list of sources to be exempted without further review. The Department may develop emission thresholds for exemption that have been determined will not interfere with the attainment or maintenance of any state or federal standard, to be maintained with the list of sources to be exempted without further review. This list of sources and source emission thresholds that are exempt without further review from the requirement to obtain a construction permit will be maintained by the Department and periodically published in the South Carolina State Register for use by the public and the regulated community. Requests to the Department may be made to add sources to the list.

(4) Sources with only fugitive emissions must submit source information, and the need for permit(s) will be made by the Department on a case-by-case basis. This determination will take into consideration, but will not be limited to, the nature and amount of the pollutants, location, proximity to residences and commercial establishments, etc.

(5) Sources of VOCs greater than 1000 lbs/month may not require a permit. This determination will take into consideration, but will not be limited to, applicability to state and federal requirements. No waiver will be permissible if federal requirements apply unless otherwise exempt. Emissions calculations and any other information necessary to document qualification for this exemption and the need for permit(s) will be made by the Department on a case-by-case basis. Exempt sources of VOCs may be required to be included in any subsequent construction or operating permit review to ensure that there is no cause or contribution to an exceedance of any ambient air quality standard or limit.

(6) Requests for exemption from the requirement to obtain a construction permit, for new sources similar to sources already on the Department maintained list established in Section II(B)(3) above, or for modifications to existing equipment, including the reconstruction, relocation, and replacement of existing equipment, which may qualify for exemption as per Section II(B)(2)(h) and Section II(B)(4) above, shall include the following information:

(a) A complete description of the existing equipment and proposed modification;

(b) The pollutant(s) being emitted and any deviation from the parameters provided in earlier permit applications, permit exemptions, and issued permits;

(c) Any ambient air quality demonstrations needed for Regulation 61-62.5, Standards No. 2, No. 7, and No. 8; and

(d) A regulatory review to demonstrate the project is not a CAA Title I modification nor subject to Regulation 61-62.5, Standards No. 7 and No. 7.1.

(7) The construction permitting exemptions in Section II(B) do not relieve the owner or operator of any source from any obligation to comply with any other applicable requirements. The Department reserves the right to require a construction permit, and the need for permit(s) will be made by the Department on a case-by-case basis. This determination will take into consideration, but will not be limited to, the nature and amount of the pollutants, location, proximity to residences and commercial establishments, etc.

(C) Construction Permit Applications

(1) Construction permit applications shall be reviewed, signed, and sealed by a professional engineer registered to practice in the State of South Carolina (except professional engineers employed by the federal government preparing applications for the federal government or other professional engineers exempted from the state registration requirements).

(2) The following are exempt from the requirement that the construction permit applications be reviewed, signed, and sealed by a registered professional engineer provided the proposed unit is identical to a prototype model which has been previously designed or otherwise certified by a professional engineer:

(a) Package-type incinerators of 750 lb/hr rated capacity or smaller which burn Types 0 and 1 wastes as defined by the Incinerator Institute of America;

(b) Package-type incinerators of 500 lb/hr rated capacity or smaller which burn animal remains excluding those remains that are considered infectious waste;

(c) Package-type boilers of 100 million Btu/hr input capacity or smaller which burn natural gas or virgin oil as fuel; and

(d) Package-type concrete batch plants that are designed to be hauled to a site, set up, and broken down quickly, with little to no additional equipment needed to manufacture product.

(3) Construction permit applications shall provide the information described in Section II(C)(3)(a) through (C)(3)(r). This information should be submitted on Department forms, but project specific information may need to be provided in addition to that requested in applicable forms.

(a) The facility name (the name used to identify the facility at the location requesting the permit);

(b) The location of the facility including its street address;

(c) The name, mailing address, e-mail address, and telephone number of the owner or operator for the facility;

(d) The name, mailing address, e-mail address, and telephone number of the facility's air permit contact person;

(e) The facility's Federal Employer Identification Number or Federal Tax ID Number;

(f) A description and the U. S. Standard Industrial Classification (SIC) Code and North American Industry Classification System (NAICS) Code of the products or product lines to be produced by the proposed sources covered by this application;

(g) The facility's planned operating schedules;

(h) A description of the facility's proposed new or altered processes, including the physical and chemical properties and feed rate of the materials used and produced (in pounds per hour), from which the facility determined potential emissions;

(i) A process flow diagram/production process layout of all new or altered sources showing the flow of materials and intermediate and final products. The process flow diagram/production process layout must identify all equipment, machines, and process steps or product lines within the production process; all product streams; all exhaust streams (emission points) including fugitive within the production process; all waste streams; and all control devices including inherent process control devices used within the production process;

(j) A detailed description of each proposed or existing source that is being altered, including the size and type along with the make and model of the source and any associated air pollution control equipment;

(k) A description, including physical and chemical properties and the Chemical Abstract Service (CAS) number (if applicable), of all emissions from each proposed source or existing source that is being altered. Mass emission data and emission calculations, including the potential uncontrolled and controlled mass emission rate of each criteria pollutant and other air contaminants such as VOCs, toxic air pollutants (TAPs), and HAPs, that will be emitted from each source covered by the application. Emission calculations must be based on proper documentation that supports the basis of the emission rates such as stack test data, AP-42 emission factors, material balance, and/or engineering estimates. All assumptions used in the emission calculations must be provided. Fugitive emissions (for example, emissions from filling operations, pumps, valves, flanges, etc.) must be included in the emission calculations;

(l) A description of all air pollution control devices or systems on the new or altered sources, whether inherent or add-on. The description shall include, but not be limited to, the manufacturer specifications and ratings, the engineering design and operating characteristics, the projected capture and destruction, the control or removal efficiencies at expected contaminant loading levels, and the monitoring data collection and recordkeeping necessary to ensure proper operation of the air pollution control devices;

(m) Source information and calculations to demonstrate compliance with "Good Engineering Practice Stack Height" rules;

(n) A description of each stack or vent related to the proposed and/or existing source(s), including the minimum anticipated height above ground, maximum anticipated internal dimensions, discharge orientation, exhaust volume flow rate, exhaust gas temperature, and rain protection device, if any;

(o) Scale drawings showing a plan view of the property lines, the location of the source, all stacks, and other emission points related to the source, as well as buildings that might affect dispersion of any emissions;

(p) An air dispersion modeling analysis or other information demonstrating that emissions from the facility, including those in the application, will not interfere with the attainment or maintenance of any ambient air quality standard;

(q) A summary of facility-wide potential uncontrolled and controlled emissions with a regulatory applicability determination; and

(r) Other information as may be necessary for proper evaluation of the source as determined by the Department.

(D) General Construction Permits

(1) The Department may develop and issue general construction permits applicable to similar sources for new construction projects or minor modifications to existing sources.

(2) Any general construction permit shall incorporate all requirements applicable to the construction of similar sources and shall identify criteria by which sources may qualify for coverage under a general construction permit.

(3) Coverage under a General Construction Permit

(a) Sources may submit a construction permit application to the Department with a request for coverage under the conditions and terms of a general construction permit for similar sources. The Department shall grant a general construction permit to sources certifying qualification for and agreeing to the conditions and terms of a general construction permit for similar sources.

(b) A source that has submitted an individual construction permit application to the Department and has not requested coverage under the conditions and terms of a general construction permit for similar sources, but which is determined to qualify for coverage under a general construction permit, may be granted coverage under the general construction permit at the sole discretion of the Department.

(4) A source shall be subject to enforcement action for operation without a valid permit if the source is later determined not to qualify for coverage under a general construction permit.

(5) The Department may grant a source authorization to operate under a general construction permit, but such a grant shall be a final permit action for purposes of judicial review.

(6) The permit application for general construction permits may deviate from the requirements of Section II(C) above, provided that such application includes all information necessary to determine qualification for, and to assure compliance with, the general permit.

(7) A source that qualifies for coverage under a Department issued general construction permit may submit a construction permit application to the Department and request an individual construction permit in lieu of coverage under a general construction permit.

(E) Synthetic Minor Construction Permits

(1) General Provisions

(a) Any stationary source may request to use federally enforceable permit conditions to limit the source's potential to emit and become a synthetic minor source.

(b) Stationary sources requesting a synthetic minor construction permit shall submit a complete permit application package to the Department as prescribed by Section II(E)(5) below.

(c) Stationary sources requesting a synthetic minor construction permit shall undergo the public participation procedures of Section II(N) below.

(d) The Department shall act, within a reasonable time, on an application for a synthetic minor construction permit and shall notify the applicant in writing of its approval, conditional approval, or denial.

(e) In the event of a denial of a synthetic minor construction permit application, the Department shall notify the applicant in writing of the reasons for the denial. The Department shall not accept a subsequent synthetic minor construction permit application until the applicant has addressed the concerns specified by the Department which caused the denial. The source shall correct all deficiencies noted by the Department within sixty (60) calendar days of receiving notice of the denial, or submit a complete major source construction permit application, as prescribed by Section II(C) above, if the source desires to proceed with the project.

(2) New Sources and Modifications

(a) A stationary source desiring to restrict its potential to emit shall submit 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 as prescribed by Section II(E)(5) below. The construction of the new or modified source shall not commence until the source has received an effective permit to construct.

(b) The owner or operator shall submit written notification to the Department of the date construction is commenced, postmarked within thirty (30) days after such date, and written notification of the actual date of initial startup of each new or altered source, postmarked within fifteen (15) days after such date. A written request to obtain an operating permit shall be submitted to the Department within fifteen (15) days after the actual date of initial startup of each new or altered source in accordance with Section II(F) below. A satisfactory compliance inspection by a Department representative may precede the issuance of an operating permit for any newly constructed or modified source.

(3) Synthetic Minor Construction Permit Conditions

(a) Synthetic minor construction permits shall contain the standard permit conditions listed in Section II(J)(1) below and any special permit conditions required to verify a source's compliance with the emissions limitations and operational requirements.

(b) The limitations and requirements listed as permit conditions shall be permanent, quantifiable, or otherwise enforceable as a practical matter.

(c) All synthetic minor construction permit conditions that constrain the operation of a source in an effort to limit potential to emit below major source threshold levels shall be federally enforceable. Unless otherwise agreed by the Department and EPA, the Department shall provide to EPA on a timely basis a copy of each proposed (or draft) and final permit intended to be federally enforceable.

(4) General Synthetic Minor Construction Permits

(a) The Department may, after notice and opportunity for public participation provided under Section II(N) below, issue a general synthetic minor construction permit applicable to similar sources.

(b) Any general synthetic minor construction permit shall incorporate all requirements applicable to the construction of similar synthetic minor sources and shall identify criteria by which sources may qualify for coverage under a general synthetic minor construction permit.

(c) Coverage under a General Synthetic Minor Construction Permit

(i) Sources may submit a synthetic minor construction permit application to the Department with a request for coverage under the conditions and terms of a general synthetic minor construction permit for similar sources. The Department shall grant a general synthetic minor construction permit to sources certifying qualification for and agreeing to the conditions and terms of a general synthetic minor construction permit for similar sources.

(ii) A source that has submitted an individual synthetic minor construction permit application and has not requested coverage under the conditions and terms of a general synthetic minor construction permit for similar sources, but which is determined to qualify for coverage under a general synthetic minor construction permit, may be granted coverage under the general synthetic minor construction permit at the sole discretion of the Department.

(d) The source shall be subject to enforcement action for operation without a valid permit if the source is later determined not to qualify for coverage under a general synthetic minor construction permit.

(e) The Department may grant a source authorization to operate under a general synthetic minor construction permit without further public notice, but such a grant shall be a final permit action for purposes of judicial review.

(f) The Department shall provide timely notice to the public of any authorization given to a facility to operate under the terms of a general synthetic minor construction permit. Such notice may be made on a periodic, summarized basis covering all facilities receiving authorization since the last notice.

(g) A source that qualifies for coverage under a Department issued general synthetic minor construction permit may submit a construction permit application to the Department and request an individual synthetic minor construction permit in lieu of coverage under a general synthetic minor construction permit.

(5) Requirements for Synthetic Minor Construction Permit Applications

(a) In addition to the minimum information required by Section II(C)(3) above, any facility applying for a synthetic minor construction permit must also provide the following:

(i) Potential emission calculations and proposed federally enforceable emission limitations for each emission unit at the facility verifying that the total emissions at the facility will be below the major source (or facility) thresholds;

(ii) All proposed production and/or operational limitations that will constrain the operation of each emission unit that are to be identified as federally enforceable; and

(iii) All proposed monitoring parameters, recordkeeping, and reporting requirements the applicant will use to determine and verify compliance with the requested federally enforceable limitations on a continuous basis. The applicant shall also provide the compliance status of these proposed parameters and requirements at the time of the application submittal.

(b) The permit application for general synthetic minor construction permits may deviate from the requirements of Section II(E)(5)(a) provided that such application includes all information necessary to determine qualification for, and to assure compliance with, the general permit.

(F) Operating Permits

(1) The owner or operator shall submit written notification to the Department of the actual date of initial startup of each new or altered source, postmarked within fifteen (15) days after such date. Any source that is required to obtain an air quality construction permit issued by the Department must obtain an operating permit when the new or altered source is placed into operation and shall comply with the requirements of this section.

(2) When a Department issued construction permit includes only emission limits, monitoring, reporting, and/or other requirements that do not establish engineering or construction specifications for the project, the owner or operator may operate the source in compliance with the terms and conditions of the construction permit until the operating permit is issued by the Department.

(3) When a Department issued construction permit includes engineering and/or construction specifications, the owner/operator or professional engineer in charge of the project shall certify that, to the best of his/her knowledge and belief and as a result of periodic observation during construction, the construction under application has been completed in accordance with the specifications agreed upon in the construction permit issued by the Department. If construction is certified as provided above, the owner or operator may operate the source in compliance with the terms and conditions of the construction permit until the operating permit is issued by the Department. If construction is not built as specified in the permit application and associated construction permit(s), the owner/operator must submit to the Department a complete description of modifications that are at variance with the documentation of the construction permitting determination prior to commencing operation. Construction variances that would trigger additional requirements that have not been addressed prior to start of operation shall be considered construction without a permit.

(4) Request for a New or Revised Operating Permit

(a) For sources covered by an effective Title V operating permit, the modification request required by Regulation 61-62.70 shall serve as the request to operate for the purposes of this regulation.

(b) For sources not subject to Regulation 61-62.70, or not yet covered by an effective Title V operating permit, the owner or operator shall submit a written request for a new or revised operating permit to cover any new, or altered source, postmarked within fifteen (15) days after the actual date of initial startup of each new or altered source.

(c) The written request for a new or revised operating permit must include, at a minimum, the following information:

(i) A list of sources that were placed into operation; and

(ii) The actual date of initial startup of each new or altered source.

(5) General Operating Permits

(a) The Department may develop and issue a general operating permit applicable to similar sources.

(b) Any general operating permit shall incorporate all requirements applicable to the operation of similar sources and shall identify criteria by which sources may qualify for coverage under a general operating permit.

(c) Coverage under a General Operating Permit

(i) Sources may submit a permit application to the Department with a request for coverage under the conditions and terms of a general operating permit for similar sources. The Department shall grant a general operating permit to a source certifying qualification for and agreeing to the conditions and terms of a general operating permit for similar sources.

(ii) A source that has submitted an individual permit application to the Department and has not requested coverage under the conditions and terms of a general operating permit for similar sources, but which is determined to qualify for coverage under a general operating permit, may be granted coverage under the general operating permit at the sole discretion of the Department.

(d) The source shall be subject to enforcement action for operation without a valid permit if the source is later determined not to qualify for coverage under a general operating permit.

(e) The Department may grant a source authorization to operate under a general operating permit, but such a grant shall be a final permit action for purposes of judicial review.

(f) A source that qualifies for coverage under a Department issued general operating permit may submit an operating permit application to the Department and request an individual operating permit in lieu of coverage under a general operating permit.

(G) Conditional Major Operating Permits

(1) The requirements of Section II(G) shall apply to those sources that request a federally enforceable permit to limit their potential to emit to less than major source thresholds.

(2) General Provisions

(a) Any stationary source that satisfies the definition of a major source may request a federally enforceable conditional major operating permit to limit the source's potential to emit and become a conditional major source. Any stationary source that has received a synthetic minor construction permit to limit the source's potential to emit below major source threshold levels, that is not required to obtain a Title V operating permit, shall be issued a conditional major operating permit to consolidate the source's limitations on potential to emit and shall be considered a conditional major source.

(b) Stationary sources requesting a conditional major operating permit shall submit a complete request for a new or revised operating permit to the Department as required by Section II(G)(6) below.

(c) Stationary sources requesting an original conditional major operating permit shall undergo the public participation procedures of Section II(N) below.

(d) The Department shall act on a request for a conditional major operating permit and shall notify the source in writing of its approval, conditional approval, or denial.

(e) In the event of a denial of a conditional major operating permit request, the Department shall notify the source in writing of the reasons for the denial. The Department shall not accept a subsequent conditional major operating permit request until the source has addressed the concerns specified by the Department which caused the original denial. The source shall correct all deficiencies noted by the Department or submit a complete permit application in accordance with Regulation 61-62.70 in order to receive a Title V operating permit.

(3) Existing Sources

(a) Any owner or operator desiring to be permitted as a conditional major source shall submit an operating permit request containing the information identified in Section II(G)(6) below. A federally enforceable conditional major operating permit shall constrain the operations of the source such that potential emissions fall below applicable regulatory levels and therefore exclude the source from the requirements to have a Title V operating permit.

(b) A request for a conditional major operating permit shall not relieve a source from the requirement to meet the deadline for submittal of a Title V operating permit application.

(4) New or Modified Sources

(a) Any owner or operator who plans to construct, alter, or add to a source of air contaminants, including the installation of any device for the control of air contaminant discharges, and desires a conditional major operating permit shall provide a written request to the Department for a federally enforceable synthetic minor construction permit conditioned to constrain the operation of the source, along with a complete construction permit application package containing the information identified in Section II(G)(6) below. The construction of the new or modified source shall not commence until the source has received an effective permit to construct from the Department.

(b) A written request to obtain a conditional major operating permit shall be submitted to the Department, postmarked within fifteen (15) days after the actual date of initial startup of each new or altered source. This request shall include any additional information required in Section II(G)(6) below. These facilities will be issued conditional major operating permits without further public notice if no substantive changes to limitations are required. A satisfactory compliance inspection by a Department representative may precede the issuance of an operating permit for any newly constructed or modified source.

(5) Conditional Major Operating Permit Conditions

(a) Conditional major operating permits shall contain the standard permit conditions listed in Section II(J)(1) below, and any special permit conditions required to verify a source's compliance with the emissions limitations and operational requirements.

(b) The limitations and requirements listed as permit conditions shall be permanent, quantifiable, or otherwise enforceable as a practical matter.

(c) All conditional major operating permit conditions that constrain the operation of a source in an effort to limit potential to emit below major source threshold levels as defined in Regulation 61-62.70 shall be federally enforceable. Unless otherwise agreed by the Department and EPA, the Department shall provide to EPA on a timely basis a copy of each proposed (or draft) and final permit intended to be federally enforceable.

(6) Additional Requirements for Conditional Major Operating Permit Requests

(a) In addition to the minimum information required by Section II(C)(3) above, any facility requesting a conditional major operating permit must also provide the following:

(i) Potential emission calculations and proposed federally enforceable emission limitations for each emission unit at the facility verifying that the total emissions at the facility will be below the major source (or facility) thresholds;

(ii) All proposed production and/or operational limitations that will constrain the operation of each emission unit that are to be identified as federally enforceable; and

(iii) All proposed monitoring parameters, recordkeeping, and reporting requirements the source will use to determine and verify compliance with the requested federally enforceable limitations on a continuous basis. The source shall also provide the compliance status of these proposed parameters and requirements at the time of the request submittal.

(b) The request for general conditional major operating permits may deviate from the requirements of Section II(G)(6) provided that such request includes all information necessary to determine qualification for, and to assure compliance with, the general permit.

(7) General Conditional Major Operating Permits

(a) The Department may, after notice and opportunity for public participation provided under Section II(N) below, issue a general conditional major operating permit applicable to similar sources.

(b) Any general conditional major operating permit shall incorporate all requirements applicable to the operation of similar conditional major sources and shall identify criteria by which sources may qualify for a general permit.

(c) Coverage under a General Conditional Major Operating Permit

(i) Sources may submit a permit application to the Department with a request for coverage under the conditions and terms of a general conditional major operating permit for similar sources. The Department shall grant a general conditional major operating permit to sources certifying qualification for and agreeing to the conditions and terms of a general conditional major operating permit for similar sources.

(ii) A source that has submitted an individual permit application to the Department and has not requested coverage under the conditions and terms of a general conditional major operating permit for similar sources, but which is determined to qualify for coverage under a general conditional major operating permit, may be granted coverage under the general conditional major operating permit at the sole discretion of the Department.

(d) The source shall be subject to enforcement action for operation without a valid permit if the source is later determined not to qualify for coverage under a general conditional major operating permit.

(e) The Department may grant a source authorization to operate under a general conditional major operating permit without further public notice, but such a grant shall be a final permit action for purposes of judicial review.

(f) The Department shall provide timely notice to the public of any authorization given to a facility to operate under the terms of a general conditional major operating permit. Such notice may be made on a periodic, summarized basis covering all facilities receiving authorization since the last notice.

(g) A source that qualifies for coverage under a Department issued general conditional major operating permit may submit a permit application to the Department and request an individual conditional major operating permit in lieu of coverage under a general conditional major operating permit.

(H) Operating Permit Renewal Requests

(1) Submission of a request for renewal meeting the requirements in Section II(H)(2)-(5) below, shall allow the owner or operator to continue operating pursuant to the most recent operating permit until such time as the Department has taken final action on the request for renewal.

(2) Any source that wishes to have its operating permit renewed must submit a written request to the Department.

(3) The provisions of Section II(H) shall apply only to those sources not subject to Regulation 61-62.70. For sources covered by an effective Title V operating permit, the operating permit renewal request required by Regulation 61-62.70 shall serve as the request to operate for the purposes of this regulation.

(4) For sources not subject to Regulation 61-62.70, the owner or operator shall submit an operating permit renewal request to the Department within ninety (90) days prior to the operating permit expiration date. The source may be inspected by the Department in order to decide whether to renew the permit. Past records of compliance and future probability of compliance will be considered in making the decision regarding renewal.

(5) Operating permit renewal requests shall include a description of any changes at the facility that have occurred since issuance of the last operating permit that may affect the operating permit or operating permit review. In general, the description shall include any addition, alteration, or removal of sources, including sources exempt from construction permit requirements; addition, alteration, or removal of emission limitations; any changes to monitoring, recordkeeping, or reporting requirements; and any changes or additions to special permit conditions. The following items should be addressed as part of the operating permit renewal request:

(a) The facility name (the name used to identify the facility at the location requesting the permit);

(b) The location of the facility including its street address;

(c) The name, mailing address, e-mail address, and telephone number of the owner or operator for the facility;

(d) The name, mailing address, e-mail address, and telephone number of the facility's air permit contact person;

(e) The facility's Federal Employer Identification Number or Federal Tax ID Number;

(f) Any change to the SIC Code or NAICS Codes of the products or product lines;

(g) Any construction permits to be incorporated into the operating permit, either whole or in part, any listed information descriptions that have been removed or decommissioned, and any changes to exempted sources listed in the current operating permit;

(h) Any change to the facility's planned operating schedules or description of the facility's current and/or proposed processes, including the physical and chemical properties and feed rate of the materials used and produced (in lb/hr) from which the facility determined actual and potential emissions;

(i) Any changes to current process flow diagram or production process layout shall be addressed, showing the flow of materials and intermediate and final products. Updated process flow diagram or production process layout must identify major equipment, machines, and process steps or product lines within the production process; all product streams; all exhaust streams (emission points) including fugitive within the production process; all waste streams; and all control devices including inherent process control devices used within the production process;

(j) A description, including the CAS number (if applicable), of all emissions from each source. Mass emission data and emission calculations, including the potential uncontrolled and controlled mass emission rate of each criteria pollutant and other air contaminants such as VOCs, TAPs, and HAPs emitted from each source. Emission calculations must be based on proper documentation that supports the basis of the emission rates such as stack test data, AP-42 emission factors, material balance, and/or engineering estimates. All assumptions used in the emission calculations must be provided. Fugitive emissions (for example, emissions from filling operations, pumps, valves, flanges, etc.) must be included in the emission calculations. A summary of facility-wide potential uncontrolled and controlled emissions with a regulatory applicability determination must be provided. If existing data supplied to the Department remains correct, identify documents referenced to comply with this requirement;

(k) A description of stack, vent, or fugitive emission parameters associated with each non-exempt emission source. For each emission point/source, this information should include, as appropriate, Universal Transverse Mercator or latitude and longitude coordinates of the emission location, the minimum height above ground, maximum internal dimensions of the emission point/vent, discharge orientation, emission exit velocity, emission exit temperature, dimensions describing the volume or area of fugitive emissions, existence of any rain protection device or other impediment to vertical dispersion, etc. If existing data supplied to the Department remains correct, identify the document(s) submitted to comply with this requirement; and

(l) Other information as may be necessary for proper evaluation of the operating permit request.

(I) Registration Permits

(1) Development of Registration Permits

(a) The Department may develop and issue a registration permit applicable to similar sources.

(b) Any registration permit developed shall incorporate all requirements applicable to the construction and operation of similar sources and shall identify criteria by which sources may qualify for coverage under a registration permit.

(c) Registration permits will be developed only for specific stationary source groups with uncontrolled potential to emit less than the threshold for major source groups, in accordance with Regulation 61-62.70, Title V Operating Permit Program; Regulation 61-62.5, Standard No. 7, Prevention of Significant Deterioration; Regulation 61-62.5, Standard No. 7.1, Nonattainment New Source Review; and where equipment similarities and simplicity remove the need for in depth site-specific review.

(2) Application for Coverage Under a Registration Permit

(a) Coverage under a Registration Permit

(i) Sources may submit a permit application to the Department with a request for coverage under the conditions and terms of a registration permit for similar sources in lieu of a construction and operating permit as provided in Section II(A) and (F) above. The Department shall grant a registration permit to sources certifying qualification for and agreeing to the conditions and terms of the registration permit applicable to similar sources.

(ii) A source that has submitted an individual permit application to the Department and has not requested coverage under the conditions and terms of a registration permit for similar sources, but which is determined to qualify for a registration permit, may be granted coverage under the registration permit at the sole discretion of the Department.

(b) The source shall be subject to enforcement action for operation without a valid permit if the source is later determined not to qualify for coverage under a registration permit.

(c) The Department reserves the right to require a construction and/or operating permit; the requirement for a permit(s) will be made by the Department on a case-by-case basis. This determination will take into consideration, but may not be limited to, the nature and amount of the pollutants, location, and proximity to residences and commercial establishments.

(d) The Department may grant a source authorization to operate under a registration permit, but such a grant shall be a final permit action for purposes of judicial review.

(e) A source that qualifies for coverage under a Department issued registration permit may submit a permit application to the Department and request an individual permit in lieu of coverage under a general registration permit.

(3) Registration Permit Conditions

(a) Registration permits shall contain any applicable permit conditions listed in Section II(J) below as the Department finds appropriate.

(b) Registration permits shall contain any applicable special permit conditions required to verify a source's compliance with any emissions limitations and operational requirements.

(4) Any registration permit may be reopened by the Department for cause or to include any new standard or regulation which becomes applicable to a source during the life of the permit.

(J) Permit Conditions

(1) Standard Permit Conditions

All construction and operating permits shall contain the following standard permit conditions.

(a) No applicable law, regulation, or standard will be contravened.

(b) All official correspondence, plans, permit applications, and written statements are an integral part of the permit. Any false information or misrepresentation in the application for a construction or operating permit may be grounds for permit revocation.

(c) For sources not required to have continuous emission monitors, any malfunction of air pollution control equipment or system, process upset, or other equipment failure which results in discharges of air contaminants lasting for one (1) hour or more and which are greater than those discharges described for normal operation in the permit application, shall be reported to the Department within twenty-four (24) hours after the beginning of the occurrence and a written report shall be submitted to the Department within thirty (30) days. The written report shall include, at a minimum, the following:

(i) The identity of the stack and/or emission point where the excess emissions occurred;

(ii) The magnitude of the excess emissions expressed in the units of the applicable emission limitation and the operating data and calculations used in determining the excess emissions;

(iii) The time and duration of the excess emissions;

(iv) The identity of the equipment causing the excess emissions;

(v) The nature and cause of such excess emissions;

(vi) The steps taken to remedy the malfunction and the steps taken or planned to prevent the recurrence of such malfunction;

(vii) The steps taken to limit the excess emissions; and

(viii) Documentation that the air pollution control equipment, process equipment, or processes were at all times maintained and operated, to the maximum extent practicable, in a manner consistent with good practice for minimizing emissions.

(d) Sources required to have continuous emission monitors shall submit reports as specified in applicable parts of the permit, law, regulations, or standards.

(e) Any owner or operator who constructs or operates a source or modification not in accordance with the application submitted pursuant to this regulation or with the terms of any approval to construct, or who commences construction after the effective date of these regulations without applying for and receiving approval hereunder, shall be subject to enforcement action.

(f) Approval to construct shall become invalid if construction is not commenced within eighteen (18) months after receipt of such approval, if construction is discontinued for a period of eighteen (18) months or more, or if construction is not completed within a reasonable time. The Department may extend the eighteen (18)-month period upon a satisfactory showing that an extension is justified. This provision does not apply to the time period between construction of the approved phases of a phased construction project; each phase must commence construction within eighteen (18) months of the projected and approved commencement date.

(g) A copy of the Department issued construction and/or operating permit must be kept readily available at the facility at all times. The owner or operator shall maintain such operational records; make reports; install, use, and maintain monitoring equipment or methods; sample and analyze emissions or discharges in accordance with

prescribed methods at locations, intervals, and procedures as the Department shall prescribe; and provide such other information as the Department reasonably may require. All records required to demonstrate compliance with the limits established under a permit shall be maintained on site for a period of at least five (5) years from the date the record was generated.

(2) Special Permit Conditions

As the Department finds appropriate, permits shall include special permit conditions such as, but not limited to, production limits, operational limits, source performance testing, operation and maintenance requirements, notification requirements, recordkeeping requirements, reporting requirements, and other monitoring as required.

(a) When special permit conditions contain production or operational limits, the permit shall have monitoring and/or recordkeeping requirements to verify a source's compliance with the limitations.

(b) When special permit conditions require an add-on air pollution control device to be operated at a specified destruction and removal efficiency level, the permit shall have monitoring and recordkeeping requirements to determine the add-on air pollution control device's performance on a short-term basis.

(c) The time period over which a permit limitation on production or operation extends will be as short as possible. For the purpose of determining compliance, permit limitations will, in general, not exceed one (1) month and shall not exceed an annual limit with a rolling monthly average or sum.

(d) An owner or operator of stationary sources that desires or is required to conduct performance tests to verify emissions limitations shall ensure that source tests are conducted in accordance with the provisions of Regulation 61-62.1, Section IV, Source Tests.

(e) An hourly emission limit shall be sufficient only if the permit condition(s) require the installation, calibration, maintenance, and operation of a CEMS or any other monitoring approved by the Department. All monitoring data shall be defined and recorded for showing compliance with the emission limit(s).

(f) The limitations and requirements listed in the permit conditions shall be permanent, quantifiable, or otherwise enforceable as a practical matter.

(K) Exceptions

(1) Upon request, the Department may alter operating permits, compliance schedules, or other restrictions on operation of a source provided that resulting ambient air concentration levels will not exceed any national or state ambient air quality standard. Factors to be considered by the Department may include, but are not limited to, technology, economics, national energy policy, and existing air quality. The request by the source must also show the following:

(a) Good faith efforts have been made to comply with the state requirements;

(b) The source is unable to comply with the state requirements because the necessary technology or other alternative methods of control are not reasonably available or have not been available for a sufficient period of time;

(c) Any available operating procedures or control measures reducing the impact of the source on ambient air concentrations have been implemented; and

(d) The request is submitted in a timely manner.

(2) The provisions of this paragraph shall not apply to mass emission limits which are imposed upon any source by the following requirements:

(a) Federal New Source Performance Standards (NSPS);

(b) National Emission Standards for Hazardous Air Pollutants (NESHAP);

(c) Federal or State Prevention of Significant Deterioration (PSD) Regulations; or

(d) Nonattainment requirements.

(3) Where a permanent increase in the visible emission limitation for a source is requested, the source must demonstrate that it will remain in compliance with the applicable particulate emission standard.

(4) Any alternative compliance schedule shall provide for compliance with the applicable regulations as expeditiously as practicable based on a plan submitted with the request for the alternative compliance schedule.

(5) Any request under this section will be subjected to public notice and opportunity for a public hearing. Upon approval by the Board, the recommendations of this Department shall be sent to the Administrator, or his designated representative, for approval or disapproval.

(6) Where alternative compliance schedule provisions are contained elsewhere in the air pollution control regulations, those provisions shall supersede the requirements in this section.

(L) Emergency Provisions

(1) An "emergency" means any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, in which a situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the permit due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.

(2) An emergency may be documented through properly signed, contemporaneous operating logs and other relevant evidence that verify:

(a) An emergency occurred and the owner or operator can identify the cause(s) of the emergency;

(b) The permitted source was, at the time the emergency occurred, being properly operated;

(c) During the period of the emergency, the owner or operator took all reasonable steps to minimize levels of emissions that exceeded the emission standards or other requirements in the permit; and

(d) The owner or operator gave a verbal notification of the emergency to the Department within twenty-four (24) hours of the time when emission limitations were exceeded, followed by a written report within thirty (30) days. The written report shall include, at a minimum, the information required by Section II(J)(1)(c)(i) through (J)(1)(c)(viii) above. The written report shall contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.

(3) This provision is in addition to any emergency or upset provision contained in any applicable requirement.

(M) Transfer of Ownership/Operation

Within thirty (30) days of the transfer of ownership/operation of a facility, the current permit holder and prospective new owner/operator shall submit to the Department a written request for transfer of the source operating or construction permit(s). The written request for transfer of the source operating or construction permit(s) shall include any changes pertaining to the facility name; the name, mailing address, and telephone number of the owner or operator for the facility; and any proposed changes to the permitted activities of the source. Transfer of the operating or construction permit(s) will be effective upon written approval by the Department.

(N) Public Participation Procedures

(1) When determined to be appropriate by the Department (or specified by regulation), notice of permitting activity shall be provided to the public and other entities for their review and comment. Public notice shall be given by publication in a newspaper of general circulation in the area where the source is located, or by posting to a public website identified by the Department, or by publication in the South Carolina State Register, and to persons on a mailing list developed by the Department, including those who request in writing to be on the list. The Department may use additional means of public notice, including, but not limited to public meetings.

(2) The notice shall include the following:

(a) The name and physical address of the facility;

(b) The name and address of the Department;

(c) Applicable activities involved in the permit action;

(d) Applicable emission change involved in any permit modification;

(e) The name, address, and telephone number of a person from whom interested persons may obtain additional information, including copies of the permit draft, the application, and all other materials available to the Department that are relevant to the permit decision, except for information entitled to confidential treatment (the contents of any proposed or draft permit shall not be treated as confidential information);

(f) A brief description of the comment procedures; and

(g) The time and place of any public hearing that may be held, including a statement of procedures to request a hearing (unless a hearing has already been scheduled).

(3) The Department shall provide at least thirty (30) days for public and EPA comment and shall give notice of any public hearing at least thirty (30) days in advance of the hearing.

(a) The Department shall keep a record of the commenters and the comments made during the public comment period.

(b) The Department shall consider all written comments submitted within a time specified in the notice of public comment and all comments received at any public hearing(s) in making a final decision on the approvability of the application.

(4) A newly constructed or modified source issued a federally enforceable final construction permit will not require an additional public comment period and/or hearing to obtain an operating permit, unless the source proposes a change in the original construction and/or operational plan, prior to commencing construction, which the Department determines would require an additional public comment period and/or hearing.

(5) Any proposed new or modified stationary source required to undergo a public comment period shall not commence any construction until all public participation procedures of this section are completed, and the source has received an effective construction permit from the Department.

(6) Maintenance activities, repairs, and replacements which the Department determines to be routine for that source category shall not, by themselves, be required to undergo the public participation procedures of Section II(N).

(O) Inspection and Entry

Upon presentation of credentials and other documents as may be required by law, the owner or operator shall allow the Department or an authorized representative to perform the following:

(1) Enter the facility where emissions-related activity is conducted, or where records must be kept under the conditions of the permit;

(2) Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;

(3) Inspect any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under this permit; and

(4) As authorized by the Clean Air Act and/or the South Carolina Pollution Control Act, sample or monitor, at reasonable times, substances or parameters for the purpose of assuring compliance with the permit or applicable requirements.

SECTION III – EMISSIONS INVENTORY AND EMISSIONS STATEMENTS

(A) General

(1) An emissions inventory is a study or compilation of pollutant emissions. The purposes of emissions inventories are to locate air pollution sources, to define the type and size of sources, to define the type and amount of emissions from each source, to determine pollutant frequency and duration, to determine the relative contributions to air pollution from classes of sources and of individual sources, to provide a basis for air permit fees, and to determine the adequacy of regulations and standards. The requirements of this section notwithstanding, an emissions inventory may be required from any source at any time.

(2) An emissions statement is a less detailed statement which focuses on emissions estimates for pollutants associated with a nonattainment designation.

(B) Emissions Inventory Reporting Requirements

(1) Beginning with the effective date of this regulation, sources must submit an emissions inventory for the previous calendar year by March 31 at a frequency as outlined below:

(a) Type A Sources are Title V Sources with annual emissions greater than or equal to any of the emission thresholds listed for Type A Sources in Table 1 below. Type A Sources must submit an emissions inventory every year.

Table 1 - Minimum Point Source Reporting Thresholds by Pollutant (tons per year)		
Pollutants	**Type A Sources: Annual Cycle**	**Potential[1] or Actual[2]**
SO_X	≥2500	Potential
VOC	≥250	Potential
NO_X	≥2500	Potential
CO	≥2500	Potential
Pb	≥0.50[2]	Actual
PM_{10}	≥250	Potential
$PM_{2.5}$	≥250	Potential
NH_3	≥250	Potential

[1] Tons per year (tpy) potential to emit means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, will be treated as part of its design if the limitation is enforceable by the Administrator and included in the source's permit prior to the end of the reporting year.

[2] The EPA considers that the ambient monitoring rule threshold is 0.5 tons of actual emissions; therefore, this criterion is based on actual emissions rather than the potential-to-emit approach taken for other criteria pollutant and precursor thresholds.

(b) All other Title V Sources with annual emissions less than the emission thresholds listed for Type A Sources in Table 1 above must submit emissions inventories every three (3) years beginning with calendar year 2014 data.

(c) Nonattainment area (NAA) Sources are sources located in a NAA with annual emissions during any year of the three (3) year cycle greater than or equal to any of the emission thresholds listed for NAA Sources in Table 2 below. These sources that are not also Type A Sources must submit emissions inventories every three (3) years beginning with calendar year 2014 data.

Table 2 - Minimum Point Source Reporting Thresholds by Pollutant (tons per year)		
Pollutant	**NAA[3] Sources: Three-year Cycle**	**Potential[1] or Actual[2]**
SO_X	≥100	Potential
VOC	≥100 (moderate O_3 NAA)	Potential
	≥50 (serious O_3 NAA)	
	≥25 (severe O_3 NAA)	
	≥10 (extreme O_3 NAA)	
NO_X	≥100 (all O_3 NAA)	Potential
CO	≥100 (all O_3 NAA)	Potential
	≥100 (all CO NAA)	
Pb	≥0.50	Actual
PM_{10}	≥100 (moderate PM_{10} NAA)	Potential
	≥70 (serious PM_{10} NAA)	
$PM_{2.5}$	≥100	Potential

Table 2 - Minimum Point Source Reporting Thresholds by Pollutant (tons per year)		
Pollutant	**NAA[3] Sources: Three-year Cycle**	**Potential[1] or Actual[2]**
NH_3	≥100	Potential

[1] Tons per year (tpy) potential to emit means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, will be treated as part of its design if the limitation is enforceable by the Administrator and included in the source's permit prior to the end of the reporting year.

[2] The EPA considers that the ambient monitoring rule threshold is 0.5 tons of actual emissions; therefore, this criterion is based on actual emissions rather than the potential-to-emit approach taken for other criteria pollutant and precursor thresholds.

[3] Special point source reporting thresholds apply for certain pollutants by type of NAA. The pollutants by nonattainment area are:
Ozone: VOC, NO_X, and CO;
Carbon Monoxide: CO; and
Particulate matter less than 10 microns: PM_{10}.

(2) Other Requirements

(a) Unless otherwise indicated, all emissions inventories must be submitted to the Department by March 31 following the year of inventory. All applicable information must be recorded in the current format for reporting emissions data provided by the Department.

(b) All newly permitted and constructed Title V Sources which have obtained or are in the process of obtaining a Title V permit and all newly permitted and constructed NAA Sources must complete and submit to the Department an initial emissions inventory for the source's first partial calendar year of operation and an emissions inventory for the source's first full calendar year of operation.

(i) The partial year emissions inventory must be submitted to the Department no later than March 31 of the year following the source's partial year of operation and must include an emissions inventory from the source's operation start date through December 31 of the same year.

(ii) The first full calendar year emissions inventory must be submitted to the Department by March 31 of the year following the source's first calendar year of operation.

(iii) Sources must submit future emissions inventories on the schedule as described in paragraph (B)(1)(a), paragraph (B)(1)(b), and paragraph (B)(1)(c) of this section.

(c) Any existing sources that are determined by the Department to be subject to Regulation 61-62.70, Title V Operating Permit Program, and/or NAA Sources must complete and submit to the Department an emissions inventory for the previous calendar year within ninety (90) days. These sources must then submit future emissions inventories on the schedule as described in paragraph (B)(1)(a), paragraph (B)(1)(b), and paragraph (B)(1)(c) of this section.

(d) Submittal of emissions inventories outside of the schedules in this section will be accepted and reviewed only if a modification has occurred that required issuance of an air quality permit since the last emissions inventory submittal by the source. This modification must alter the quantity or character of the source's emissions. These sources may submit a new emissions inventory following the first full calendar year of operation after the modification. These sources must then submit future emissions inventories on the schedule described in paragraph (B)(1)(a), paragraph (B)(1)(b), and paragraph (B)(1)(c) of this section.

(e) Information required in an emissions inventory submittal to the Department must include the following:

(i) Information on fuel burning equipment;
(ii) Types and quantities of fuel used;
(iii) Fuel analysis;
(iv) Exhaust parameters;
(v) Control equipment information;
(vi) Raw process materials and quantities used;
(vii) Design, normal, and actual process rates;
(viii) Hours of operation;
(ix) Significant emission generating points or processes as discussed in the current format for reporting emissions data provided by the Department;
(x) Any desired information listed in 40 CFR Part 51 Subpart A (December 17, 2008) that is requested by the Department;
(xi) Emissions data from all regulated pollutants; and
(xii) Any additional information reasonably related to determining if emissions from an air source are causing standards of air quality to be exceeded.

(f) A source may submit a written request to the Department for approval of an alternate method for estimating emissions outside of those methods prescribed by the Department. Such requests will be reviewed by the Department's emissions inventory staff on a case-by-case basis to determine if the alternate method better characterizes actual emissions for the reporting period than the Department's prescribed methods.

(g) Emission estimates from insignificant activities listed on a source's permit are required only in the initial emissions inventory submitted by the source. If emissions from these insignificant activities have not been included in a past emissions inventory submitted to the Department, the source must include these emissions in their next required emissions inventory submittal.

(h) Copies of all records and reports relating to emissions inventories as required in this section must be retained by the owner/operator at the source for a minimum of five (5) years.

(C) Emissions Statement Requirements

(1) Sources in areas designated nonattainment for an ozone National Ambient Air Quality Standard (NAAQS) must submit to the Department by March 31 for the previous calendar year an emissions statement which includes emissions estimates for both VOCs and nitrogen oxides (NO_X) beginning with the effective date of this regulation.

(2) The statement must contain a certification that the information contained in the statement is accurate to the best knowledge of the individual certifying the statement.

(3) All applicable information must be recorded in the current format for reporting emissions data provided by the Department.

(4) Copies of all records and reports relating to emissions statements as required in this section must be retained by the owner or operator at the source for a minimum of five (5) years.

SECTION IV – SOURCE TESTS

(A) Applicability

(1) This section shall apply to the owner, operator, or representative of any source which conducts:

(a) A source test required under an applicable standard or permit condition; or pursuant to a judicial or administrative order, consent agreement, or any other such binding requirement entered into after the effective date of this standard; or

(b) Any other source test from which data will be submitted to the Department for any purpose including but not limited to: determination of applicability of regulatory requirements, development of emission factors, establishment of parameters for compliance assurance monitoring, continuous emission monitor performance specification testing, and Relative Accuracy Test Audits (RATA).

(2) The Department may, on a case-by-case basis, exempt from the requirements of this section source tests which are performed for development of emission factors or for determination of applicability of regulations.

(B) Submission and Approval of a Site-Specific Test Plan

(1) Prior to conducting a source test subject to this section, the owner, operator, or representative shall ensure that:

(a) A written site-specific test plan, including all of the information required in Section IV(C) below, has been developed and submitted to the Department. If the Department has previously approved a site-specific test plan, the owner, operator, or representative may submit a letter which references the approved plan and which includes a thorough description of amendments to the plan; and

(b) Written Department approval of the site-specific test plan or amended test plan, methods, and procedures has been received.

(2) All test methods included in the site-specific test plan must be either EPA Reference Methods described in 40 CFR Part 51, Appendix M; or 40 CFR Part 60, Appendix A; or 40 CFR Part 61, Appendix B; or 40 CFR Part 63, Appendix A. If an applicable air regulation or permit provides for a choice of test methods, the selected method must be approved by the Department. If an applicable air regulation or permit does not specify use of an EPA standard reference method, the alternative test method to be used must be approved by the Department.

(3)(a) The owner, operator, or representative of a source proposing to use alternative source test methods shall ensure that the alternative source test method is either validated according to EPA Reference Method 301 (40 CFR Part 63, Appendix A, December 29, 1992) and any subsequent amendments or editions, or approved by the Department.

(b) The owner, operator, or representative shall ensure that requests for approval of alternative source test methods are submitted to the Department along with the site-specific test plan, and that the submission contains all of the information required by Section IV(C) below.

(4) The Department shall determine whether any source test method proposed in the site-specific test plan is appropriate for use.

(5)(a) The owner, operator, or representative shall submit site-specific test plans or a letter which amends a previously approved test plan at least forty-five (45) days prior to the proposed test date or as otherwise specified by a relevant federal or state requirement. Sources conducting tests for substances listed in Regulation 61-62.5,

Standard No. 8, shall submit site-specific test plans or a letter which amends a previously approved test plan at least sixty (60) days prior to the proposed test date.

(b) If the only amendments to a previously approved test plan are to facility information included in Section IV(C)(1)(a) and (C)(1)(b) below, the requirement in Section IV(B)(5)(a) above will not apply. The owner, operator, or representative however, shall submit the amendments at least two (2) weeks prior to the proposed test date.

(6) Within thirty (30) days of site-specific test plan receipt, the Department will notify the owner, operator, or representative of site-specific test plan approval or denial or will request additional information.

(7) The owner, operator, or representative shall submit any additional information requested by the Department necessary to facilitate the review of the site-specific test plan.

(8) Approval of a site-specific test plan for which an owner, operator, or representative fails to submit any additional requested information will be denied.

(9) Neither the submission of a site-specific test plan, nor the Department's approval or disapproval of a plan, nor the Department's failure to approve or disapprove a plan in a timely manner shall relieve an owner, operator, or representative of legal responsibility to comply with any applicable provisions of this section or with any other applicable federal, state, or local requirement or prevent the Department from enforcing this section.

(C) Requirements for a Site-Specific Test Plan

A site-specific test plan shall include, at a minimum, the following Section IV(C)(1) through (C)(8):

(1) General Information:

(a) Facility name, address, telephone number, and name of facility contact;

(b) Facility permit number and source identification number;

(c) Name, address, and telephone number of the company contracted to perform the source test; and

(d) Name, address, and telephone number of the laboratory contracted to perform the analytical analysis of the source test samples.

(2) Test Objectives:

(a) Description and overall purpose of the tests (for example, to demonstrate compliance, to establish emission factors, etc.); and

(b) Citation of any applicable state or federal regulation or permit condition requiring the tests.

(3) Process Descriptions:

(a) Description of the process including a description of each phase of batch or cyclic processes and the time required to complete each phase;

(b) Process design rates, normal operating rates, and operating rates specified by applicable regulation;

(c) Proposed operating rate and conditions for the source test;

(d) Methods including proposed calculations, equations, and other related information that will be used to demonstrate and verify the operating rate during the source test;

(e) Description of any air pollution control equipment;

(f) Description of any stack gas or opacity monitoring systems;

(g) Description of all air pollution control monitors (for example, pressure gauges, flow indicators, cleaning cycle timers, electrostatic precipitator voltage meters, etc.) when applicable; and

(h) A list of process and air pollution control operating parameters that will be recorded during the tests, the responsible party who will record these readings, and the frequency at which readings will be recorded.

(4) Safety Considerations:

(a) Identification of any risks associated with sampling location and accessibility, toxic releases, electrical hazards, or any other unsafe conditions; and a plan of action to correct or abate these hazards; and

(b) List of all necessary or required safety equipment including respirators, safety glasses, hard hats, safety shoes, hearing protection, and other protective equipment.

(5) Sampling and Analytical Procedures:

(a) Description of sampling methods to be used;

(b) Description of analytical methods to be used;

(c) Number of tests to be conducted;

(d) Number of runs comprising a test;

(e) Duration of each test run;

(f) Description of minimum sampling volumes for each test run;

(g) Location where samples will be recovered;

(h) Explanation of how blank and recovery check results and analytical non-detects will be used in final emission calculations;

(i) Maximum amount of time a sample will be held after collection prior to analysis; and

(j) Method of storing and transporting samples.

(6) Sampling Locations and Documentation:

(a) Schematics of sampling sites (include stack dimensions and distances upstream and downstream from disturbances);

(b) A description of all emission points, including fugitive emissions, associated with the process to be tested, and when applicable, the method that will be used to measure or include these emissions during the source test; and

(c) Procedure for verifying absence of cyclonic or non-parallel stack gas flow.

(7) Internal Quality Assurance/Quality Control (QA/QC) Measures - for each proposed test method when applicable:

(a) Citation of the QA/QC procedures specified in the EPA Reference Methods and the EPA Quality Assurance Handbook for Air Pollution Measurement Systems, Volume III;

(b) Chain-of-custody procedures and copies of chain-of-custody forms;

(c) Procedure for conditioning particulate matter filters (before and after source testing);

(d) Procedure for conducting leak checks on vacuum lines, pitot tubes, flexible bags, orsats, etc.;

(e) Equipment calibration frequencies, ranges, and acceptable limits;

(f) Minimum detection limits of analytical instrumentation;

(g) Names, addresses, and responsible persons of all sub-contracting laboratories and a description of analytical methods to be used, chain-of-custody procedures, and QA/QC measures;

(h) QA/QC measures associated with the collection and analysis of process or raw material samples and the frequency at which these samples will be collected;

(i) Methods for interference and matrix effects checks, and number of replicate analyses;

(j) Methods and concentrations for internal standards (standards additions prior to extraction);

(k) Methods and concentrations for surrogate standards (standards additions to collection media prior to sampling);

(l) Methods for recovery checks, field blanks, lab blanks, reagent blanks, proof rinse blanks, and analytical blanks;

(m) Proposed range of recoveries for data acceptability and method of data interpretation if sample recovery is not within the proposed range; and

(n) Procedure for obtaining, analyzing, and reporting source test method performance audit samples and results.

(8) Final Test Report Content:

(a) Final report outline;

(b) Example calculations when using alternative test methods or for calculation of process operating rates; and

(c) Proposed report submission date if more than thirty (30) days after the source test will be needed to complete the report.

(D) Notification and Conduct of Source Tests

(1) Prior to conducting a source test subject to this section, the owner, operator, or representative shall ensure that a complete written notification is submitted to the Department at least two (2) weeks prior to the test date or as otherwise specified by a relevant federal or state requirement. Submission of a site-specific test plan or amendments to a previously approved test plan does not constitute notification. Requirements for a complete notification include the following:

(a) Facility name, permit number, mailing address, physical address, and contact name and phone number;

(b) Source(s) being tested, source identification number(s), and pollutant(s) being tested;

(c) Proposed test date and start time for each source being tested; and

(d) Approved test plan being used to conduct the test identified by Department approval date.

(2) In the event the owner, operator, or representative is unable to conduct the source test on the date specified in the notification, the owner, operator, or representative shall notify the Department as soon as practical by telephone and follow up in writing within thirty (30) days. Telephone notification shall include a description of the circumstance(s) causing the cancellation of the test, and a projected retest date. The written follow-up report shall include a description of the condition(s) which prevented the source test from being conducted, and when applicable, what corrective action was performed, or what equipment repairs were required.

(3) Rescheduling of canceled source tests must meet the two-week notice requirement. However, shorter notification periods may be allowed subject to Department approval.

(4) All tests shall be conducted by or under the direction of a person qualified by training and/or experience in the field of air pollution testing or, where required by federal regulation, meeting the minimum competency requirements for air emissions testing as specified in ASTM D7036-04, Standard Practice for Competence of Air Emission Testing Bodies.

(5) Unless approved otherwise by the Department, the owner, operator, or representative shall ensure that source tests are conducted while the source is operating at the maximum expected production rate or other production rate or operating parameter which would result in the highest emissions for the pollutants being tested or as otherwise specified in a relevant federal or state requirement. Examples of the operating parameters that may affect emission rates are: type and composition of raw materials and fuels, isolation of control equipment modules, product types and dimensions, thermal oxidizer combustion temperature, atypical control equipment settings, etc. Some sources may have to spike fuels or raw materials to avoid being permitted at a more restrictive feed or process rate. Any source test performed at a production rate less than the rated capacity may result in permit limits on emission rates, including limits on production if necessary.

(6) When conducting a source test subject to this section, the owner, operator, or representative of a source shall provide the following:

(a) Department access to the facility to observe source tests;

(b) Sampling ports adequate for test methods;

(c) Safe sampling site(s);

(d) Safe access to sampling site(s);

(e) Utilities for sampling and testing equipment; and

(f) Equipment and supplies necessary for safe testing of a source.

(E) Source Test Method Performance Audit Program

(1) The Department may request that samples collected during any source tests be split with the Department for analysis by an independent or Department laboratory. Any request for split samples will be made in advance of the source test.

(2) Performance testing shall include a test method performance audit (PA) during the performance test if a PA sample is commercially available.

(a) PAs consist of blind audit samples supplied by an accredited audit sample provider (AASP) and analyzed during the performance test in order to provide a measure of test data bias.

(b) An "accredited audit sample provider (AASP)" is an organization that has been accredited to prepare audit samples by an independent, third party accrediting body.

(3) The source owner, operator, or representative of the tested facility shall obtain an audit sample, if commercially available, from an AASP for each test method used for regulatory compliance purposes.

(a) No audit samples are required for the following test methods: Methods 3A and 3C of Appendix A-2 of 40 CFR Part 60; Methods 6C, 7E, 9, and 10 of Appendix A-4 of 40 CFR Part 60; Method 18 of Appendix A-6 of 40 CFR Part 60; Methods 20, 22, and 25A of Appendix A-7 of 40 CFR Part 60; and Methods 303, 318, 320, and 321 of Appendix A of 40 CFR Part 63.

(b) If multiple sources at a single facility are tested during a compliance test event, only one audit sample is required for each method used during a compliance test.

(c) Upon request, the Department may waive the requirement to include an audit sample if the Department determines that an audit sample is not necessary. A waiver of the performance audit requirements to conduct a PA for a particular source does not constitute a waiver of performance audit requirements for future source tests.

(d) "Commercially available" means that two or more independent AASPs have blind audit samples available for purchase. If the source owner, operator, or representative cannot find an audit sample for a specific method, the owner, operator, or representative shall consult the EPA Web site at the following URL, http://www.epa.gov/ttn/emc, to confirm whether there is an AASP that can supply an audit sample for that method.

(e) If the EPA Web site does not list an available audit sample at least 60 days prior to the beginning of the compliance test, the source owner, operator, or representative shall not be required to include an audit sample as part of the quality assurance program for the compliance test.

(f) When ordering an audit sample, the source, operator, or representative shall give the AASP an estimate for the concentration of each pollutant that is emitted by the source or the estimated concentration of each pollutant based on the permitted level and the name, address, and phone number of the Department.

(g) The source owner, operator, or representative shall report the results for the audit sample along with a summary of the emission test results for the audited pollutant to the Department and shall report the results of the audit sample to the AASP. The source owner, operator, or representative shall make both reports at the same time and in the same manner or shall report to the Department first and then report to the AASP.

(h) If the method being audited is a method that allows the samples to be analyzed in the field and the tester plans to analyze the samples in the field, the tester may analyze the audit samples prior to collecting the emission samples provided a representative of the Department is present at the testing site. The source owner, operator,

or representative may request in the test protocol a waiver to the requirement that a representative of the Department must be present at the testing site during the field analysis of an audit sample.

(i) The final test report shall document any attempt to obtain an audit sample and, if an audit sample was ordered and utilized, the pass/fail results as applicable.

(4) The Department shall have discretion to require any subsequent remedial actions of the owner, operator, or representative based on the split samples and/or performance audit results.

(F) Final Source Test Report

(1) The owner, operator, or representative of a source subject to this section shall submit a written report of the final source test results to the Department by the close of business on the thirtieth (30th) day following the completion of the test, unless an alternative date has been requested in and approved with the site-specific test plan prior to testing or is otherwise specified in a relevant federal or state requirement.

(2) The final test report for each site-specific test plan shall contain, at a minimum, the following supporting information when applicable:

(a) Summary of the results;

(b) Emission calculations and emission rates in units of the applicable standard, permit limit, etc.;

(c) Allowable emission rates in units of the applicable standard, permit limit, etc.;

(d) Source compliance status;

(e) Process operating rates;

(f) Methods including actual calculations, equations, and other related information that were used to demonstrate and verify the operating rate during the source test;

(g) Chain of custody records;

(h) Certification of all reference standards used;

(i) Signature of a responsible facility representative who can verify process operating rates and parameters;

(j) Legible copies of all raw laboratory data (for example, filter tare and final weights, titrations, chromatograms, spectrograms, analyzer measurements, etc.);

(k) Legible copies of all raw field data (for example, strip charts, field data forms, field calibration forms, etc.);

(l) Legible copies of applicable stack gas or opacity monitoring system readings identified in the approved site-specific test plan;

(m) Legible copies of all applicable process and air pollution control operating parameter readings identified in the approved site-specific test plan;

(n) Results of all calibrations and QA/QC measures and checks identified in the approved site-specific test plan;

(o) Results of performance audits pursuant to Section IV(E) above or documentation that no audit sample was commercially available sixty (60) days prior to the beginning of the compliance test;

(p) Description of any deviations from the proposed process operations as approved in the site-specific test plan during testing;

(q) Description of any deviations from approved sampling methods/procedures;

(r) Description of any deviations from approved analytical procedures;

(s) Description of any problems encountered during sampling and analysis, and explanation of how each was resolved; and

(t) Legible copies of any applicable or required certifications (for example, Visible Emission Observer, Qualified Source Testing Individual (QSTI), etc.).

(G) Noncompliant Results

Within fifteen (15) days of submission of a test report indicating noncompliance, the owner, operator, or representative shall submit to the Department a written plan which includes at a minimum:

(1) Interim actions being taken to minimize emissions pending demonstration of compliance;

(2) Corrective actions that have been taken or that are proposed to return the source to compliance;

(3) Method that will be used to demonstrate the source has returned to compliance (for example, retest and proposed date); and

(4) Any changes necessary to update the site-specific test plan prior to a retest.

(H) Analytical Observation

Upon request by the Department, the owner, operator, representative, or the source test consultant shall ensure that Department representatives are provided access to the analytical laboratory for observation of instrument calibrations and analysis of field and audit samples.

(I) Site Inspection

Upon request by the Department and prior to approval of the site-specific test plan, the owner, operator, or representative shall ensure Department representatives are provided access to the site for inspection of the source(s) to be tested.

(J) Modifications

Modifications to the approved site-specific test plan must have prior Department approval. Approval shall be considered on a case-by-case basis. Failure to obtain prior Department approval may cause final test results to be unacceptable.

SECTION V – CREDIBLE EVIDENCE

(A) The Department promulgated Regulation 61-62, Air Pollution Control Regulations and Standards, and developed the South Carolina Air Quality Implementation Plan to provide enforceable emission limitations; to establish an adequate enforcement program; to require owners or operators of stationary sources to monitor

emissions, submit periodic reports of such emissions, and maintain records as specified by various regulations and permits; and to evaluate reports and records for consistency with the applicable emission limitation or standard on a continuing basis over time. The monitoring data collected and records of operations would serve as the basis for a source to certify compliance, and could be used by the Department as direct evidence of an enforceable violation of the underlying emission limitation or standard.

(B) The purpose of this section is:

(1) To clarify the statutory authority of Regulation 61-62, Air Pollution Control Regulations and Standards, and the South Carolina Air Quality Implementation Plan, whereby non-reference test data and various kinds of information already available and utilized for other purposes may be used to demonstrate compliance or noncompliance with emission standards;

(2) To eliminate any potential ambiguity regarding language that has been interpreted to provide for exclusive reliance on reference test methods as the means of certifying compliance with various emission limits; and

(3) To curtail language that limits the types of testing or monitoring data that may be used for determining compliance and for establishing violations.

(C) The following are applicable in the determination of noncompliance by the Department or for compliance certification by the owners or operators of stationary sources:

(1) Enforcement - Consistent with South Carolina's Environmental Audit Privilege and Voluntary Disclosure Act, codified as S.C. Code Ann. Sections 48-57-10 et seq., and notwithstanding any other provision in the South Carolina Air Quality Implementation Plan, any credible evidence or information relevant to whether a source would have been in compliance with applicable requirements if the appropriate performance or compliance test had been performed, can be used to establish whether or not a person has violated or is in violation of any standard in the plan; and

(2) Compliance Certifications - Consistent with South Carolina's Environmental Audit Privilege and Voluntary Disclosure Act, codified as S.C. Code Ann. Sections 48-57-10 et seq., and notwithstanding any other provision in the South Carolina Air Quality Implementation Plan, the owner or operator may use any credible evidence or information relevant to whether a source would have been in compliance with applicable requirements if the appropriate performance or compliance test had been performed for the purpose of submitting compliance certifications.

61-62.5. Standard No. 2. Ambient Air Quality Standards.

The following table, unless otherwise noted, constitutes the primary and secondary ambient air quality standards for the State of South Carolina. The computations for determining if the applicable standard is met, along with the analytical methods to be used, will be those applicable Federal Reference Methods and Interpretations published in the Appendices to 40 Code of Federal Regulations (CFR) Part 50, or those methods designated as Federal Equivalent Methods (FEM) in accordance with 40 CFR Part 53.

Pollutant	Reference	Measuring Interval	Standard Level			
			mg/m^3	$\mu g/m^3$	ppm	ppb
Sulfur Dioxide	40 CFR 50.4 40 CFR 50.5	3 hour (secondary)	-	1300	0.5	-
	40 CFR 50.17	1- hour (primary)	-	-	-	75
PM_{10}	40 CFR 50.6	24 hour	-	150	-	-

Pollutant	Reference	Measuring Interval	Standard Level			
			mg/m^3	$\mu g/m^3$	ppm	ppb
$PM_{2.5}$	40 CFR 50.13 40 CFR 50.18	24 hour (primary)	-	35	-	-
		Annual (primary)	-	12	-	-
		24 hour (secondary)	-	35		
		Annual (secondary)	-	15		
Carbon Monoxide	40 CFR 50.8	1 hour (no secondary)	40	-	35	-
		8 hour (no secondary)	10	-	9	-
Ozone	40 CFR 50.15	8 hour (2008)	-	-	0.075	-
	40 CFR 50.19	8 hour (2015)	-	-	0.070	-
Nitrogen Dioxide	40 CFR 50.11	Annual	-	100	0.053	53
		1-hour				100
Lead	40 CFR 50.16	Rolling 3-month Average	-	0.15	-	-

61-62.5. Standard No. 5.2. Control of Oxides of Nitrogen (NO_X).

SECTION I - APPLICABILITY

(A) Except as provided in paragraph (B) of this part, the provisions of this regulation shall apply to any stationary source that emits or has the potential to emit oxides of nitrogen (NO_X) generated from fuel combustion. A stationary source becomes an affected source under this regulation upon meeting one or more of the criteria specified in paragraphs (A)(1), (A)(2), and (A)(3) below:

(1) Any new source that is constructed after June 25, 2004.

(2) Any existing source where a burner assembly is replaced with another burner assembly after the effective date of this regulation, regardless of size or age of the burner assembly to be replaced shall become an existing affected source and is subject to sections (V), (VI), and (VII) below. The replacement of individual components such as burner heads, nozzles, or windboxes does not trigger affected source status.

(3) Any existing source removed from its presently permitted facility (either from in-state or out-of-state) and moved to another permitted facility in-state after the effective date of this regulation shall be considered a new affected source. Any existing sources relocated between permitted facilities within the State under common ownership shall not become an existing affected source until Section I(A)(2) is triggered.

(B) Exemptions:

The following sources are exempt from all requirements of this regulation unless otherwise specified:

(1) Boilers of less than 10 million British thermal unit per hour (BTU/hr) rated input.

(2) Any source that qualifies as exempt under Regulation 61-62.1, II(B)(2) or II(B)(3).

(3) Any source with total uncontrolled potential to emit less than 5 tons per year of NO_X.

(4) Any source which has undergone a Best Available Control Technology (BACT) analysis or Lowest Achievable Emission Rate (LAER) for NO_X in accordance with Regulation 61-62.5, Standard No. 7, and 7.1, respectively.

(5) Any stationary internal combustion engine with a mechanical power output of less than two hundred (200) brake horsepower (bhp) or 149kW.

(6) Any device functioning solely as a combustion control device. Waste heat recovery from these combustion control devices shall not be considered primary grounds for exclusion from this exemption.

(7) Any equipment that has NO_X limits pursuant to the requirements of 40 Code of Federal Regulations (CFR) Parts 60, 61, or 63 where such limits are equivalent to, or more stringent than, the requirements of this regulation.

(8) Any source that has NO_X limits pursuant to the requirements of Regulation 61-62.96, where such limits are equivalent to, or more stringent than, the requirements of this regulation.

(9) Any source that has NO_X limits pursuant to the requirements of Regulation 61-62.97, Cross-State Air Pollution Rule (CSAPR) Trading Program, where such limits are equivalent to, or more stringent than, the requirements of this regulation.

(10) Any source that has NO_X limits pursuant to the requirements of Regulation 61-62.99.

(11) Air Curtain Incinerators.

(12) Engines Test Cells and/or Stands.

(13) Portable and temporary internal combustion (IC) engines such as those associated with generators, air compressors, or other applications provided that they fall in the categories listed in 40 CFR Part 89, (Control of Emissions from New and In-Use Nonroad Compression-Ignition Engines), 40 CFR Part 1039 (Control of Emissions from New and In-Use Nonroad Compression-Ignition Engines), and 40 CFR Part 1068 (General Compliance Provisions for Highway, Stationary, and Nonroad Programs).

(14) Combustion sources that operate at an annual capacity factor of ten (10) percent or less per year.

(15) Special use burners, such as startup/shutdown burners, that are operated less than 500 hours a year are exempt from the existing source replacement requirements.

(16) Liquor guns on a recovery boiler are only exempt from the standard requirements in Section IV below.

(17) Portable sources such as asphalt plants or concrete batch plants are considered existing sources only and become existing affected sources when the burner assembly is replaced under Section I(A)(2).

(18) The Department reserves the right to consider any other exemptions from this regulation on a case-by-case basis as appropriate.

SECTION II - DEFINITIONS

For the purposes of this regulation, the following definitions shall apply:

(A) Annual Capacity Factor: Means the ratio between the actual heat input to a combustion unit from the fuels during a calendar year and the potential heat input to the steam generating unit had it been operated for 8,760 hours during a calendar year at the maximum steady state design heat input capacity.

(B) Burner Assembly: Means any complete, pre-engineered device that combines air (or oxygen) and fuel in a controlled manner and admits this mixture into a combustion chamber in such a way as to ensure safe and efficient combustion. A self-contained chamber such as is found on a combustion turbine is not a burner assembly for the purposes of this regulation.

(C) Case-by-Case NO_X Control: Means an emissions limitation based on the maximum degree of reduction for NO_X which would be emitted from any new source which the Department, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source through application of production processes or available methods, systems, and techniques. In no event shall application of NO_X control result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard. If the Department determines that technological or economic limitations on the application of measurement methodology to a particular source would make the impositions of an emission standard infeasible, a design, equipment, work practice, operational standard, or combination thereof, may be prescribed instead to satisfy the requirement for the application of NO_X control. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results.

(D) Combustion Control Device: Means, but is not limited to, any equipment that is used to destroy or remove air pollutant(s) prior to discharge to the atmosphere, excluding boilers, process heaters, dryers, furnaces, digesters, ovens, combustors, and similar combustion devices. Such equipment includes, but is not limited to, thermal oxidizers, catalytic oxidizers, and flares.

(E) Constructed: Means the on-site fabrication, erection, or installation of the NO_X emitting source.

(F) Equivalent Technology: Means any item that is identical or functionally equivalent to the existing component. This component may serve the same purpose or function as the replaced component, but may be different in some respects or improved in some ways.

(G) Existing affected source: Means sources constructed on or before June 25, 2004, and that meet the applicability requirements of Section I(A)(2).

(H) Fuel: Means the following fuels, any combination of the fuels or any combustible material the Department determines to be a fuel including, but not limited to:

(1) Virgin fuel, waste, waste fuel, and clean wood (biomass fuel) as defined in Regulation 61-62.1.

(2) Biodiesel: Means a mono-alkyl ester derived from vegetable oil and animal fat and conforming to ASTM D6751.

(3) Biofuel: Means any biomass-based solid fuel that is not a solid waste. This includes, but is not limited to, animal manure, including litter and other bedding materials; vegetative agricultural and silvicultural materials, such as logging residues (slash), nut and grain hulls and chaff (for example, almond, walnut, peanut, rice, and wheat), bagasse, orchard prunings, corn stalks, coffee bean hulls and grounds.

(4) Digester gas: Means any gaseous by-product of wastewater treatment typically formed through the anaerobic decomposition of organic waste materials and composed principally of methane and CO_2.

(5) Fossil Fuel: Means natural gas, petroleum, coal, and any form of solid, liquid, or gaseous fuel derived from such material for the purpose of creating useful heat. Petroleum for facilities constructed, reconstructed, or

modified before May 4, 2011, means crude oil or a fuel derived from crude oil, including, but not limited to, distillate oil and residual oil. For units constructed, reconstructed, or modified after May 3, 2011, petroleum means crude oil or a fuel derived from crude oil, including, but not limited to, distillate oil, residual oil, and petroleum coke.

(6) Landfill Gas: Means a gaseous by-product of the land application of municipal refuse typically formed through the anaerobic decomposition of waste materials and composed principally of methane and CO_2.

(I) New affected source: Means any affected source which has been constructed after June 25, 2004, or meets the applicability requirements of Section I(A)(3). A new affected source will not be considered an existing affected source at burner assembly replacement under Section I(A)(2).

(J) Non-routine maintenance is an unforeseen failure of a single burner assembly in an existing affected source with multiple burner application forcing an unplanned replacement of the existing burner.

(K) Source: Means a stationary NO_X emission unit, comprised of one or more burners.

SECTION III - STANDARD REQUIREMENTS FOR NEW AFFECTED SOURCES

(A) Those affected sources as defined in Section I(A)(1) and (A)(3) above shall apply NO_X controls to achieve the limitations provided in Table 1 of this section. Unless otherwise noted, all emission limits for affected sources required to use Continuous Emissions Monitoring (CEMS) shall be based on thirty (30) day rolling averages.

(B) An affected source may request an alternate control limitation by submitting a demonstration that the alternate limitation is a Case-by-Case NO_X Control as defined in Section II above.

(C) The Department reserves the right to request that the owner or operator submit additional information for those affected sources that request alternate control limitation in accordance with Section III(B) above.

(D) Affected sources required to install post combustion technology for the control of NO_X shall be required to use post combustion for the control of NO_X during the ozone season.

Table 1 - NO_X Control Standards

Source Type	Emission Limit
Propane and/or Natural Gas-Fired Boilers	
≥10 million British thermal units per hour (MMBtu/hr) and < 100 MMBtu/hr	Low-NO_X Burners or equivalent technology, shall achieve 0.036 pounds per million British thermal units (lb/MMBtu)
≥100 MMBtu/hr	Low-NO_X Burners + Flue Gas Recirculation or equivalent technology, shall achieve 0.036 lb/MMBtu
Distillate Oil-Fired Boilers	
≥10 MMBtu/hr and < 100 MMBtu/hr	Low-NO_X Burners or equivalent technology, shall achieve 0.15 lb/MMBtu
≥100 MMBtu/hr	Low-NO_X Burners + Flue Gas Recirculation or equivalent technology, shall achieve 0.14 lb/MMBtu
Residual Oil-Fired Boilers	
≥10 MMBtu/hr and < 100 MMBtu/hr	Low-NO_X Burners or equivalent technology, shall achieve 0.3 lb/MMBtu
≥100 MMBtu/hr	Low-NO_X Burners + Flue Gas Recirculation or equivalent technology, shall achieve 0.3 lb/MMBtu

Source Type	Emission Limit
Multiple Fuel Boilers	
The emission limits for boilers burning multiple fuels are calculated in accordance with the formulas below. Additional fuels or combination of fuels not otherwise listed in this table shall be addressed on a case-by-case basis.	
≥10 MMBtu/hr and < 100 MMBtu/hr	$E_n = [(0.036 \text{ lb/MMBtu } H_{ng}) + (0.15 \text{ lb/MMBtu } H_{do}) + (0.3 \text{ lb/MMBtu } H_{ro}) + (0.35 \text{ lb/MMBtu } H_c) + (0.2 \text{ lb/MMBtu } H_w)]/(H_{ng} + H_{do} + H_{ro} + H_c + H_w)$ where: E_n is the nitrogen oxides emission limit (expressed as nitrogen dioxide (NO_2)), ng/J (lb/million Btu), H_{ng} is the heat input from combustion of natural gas, and/or propane, H_{do} is the heat input from combustion of distillate oil, H_{ro} is the heat input from combustion of residual oil, H_c is the heat input from combustion of coal, and H_w is the heat input from combustion of wood residue.
≥100 MMBtu/hr	$E_n = [(0.036 \text{ lb/MMBtu } H_{ng}) + (0.14 \text{ lb/MMBtu } H_{do}) + (0.3 \text{ lb/MMBtu } H_{ro}) + (0.25 \text{ lb/MMBtu } H_c) + (0.2 \text{ lb/MMBtu } H_w)]/(H_{ng} + H_{do} + H_{ro} + H_c + H_w)$ where: E_n is the nitrogen oxides emission limit (expressed as NO_2), ng/J (lb/million Btu), H_{ng} is the heat input from combustion of natural gas, and/or propane, H_{do} is the heat input from combustion of distillate oil, H_{ro} is the heat input from combustion of residual oil, H_c is the heat input from combustion of coal, and H_w is the heat input from combustion of wood residue.
Wood Residue Boilers	
All types	Combustion controls to minimize NO_X emissions or equivalent technology, shall achieve 0.20 lb/MMBtu
Coal-Fired Stoker Fed Boilers	
< 250 MMBtu/hr	Combustion controls to minimize NO_X emissions or equivalent technology, shall achieve 0.35 lb/MMBtu
≥ 250 MMBtu/hr	Combustion controls to minimize NO_X emissions or equivalent technology, shall achieve 0.25 lb/MMBtu
Pulverized Coal-Fired Boilers	
< 250 MMBtu/hr	Low-NO_X Burners + Combustion controls to minimize NO_X emissions or equivalent technology, shall achieve 0.35 lb/MMBtu
≥ 250 MMBtu/hr	Low-NO_X Burners + Combustion controls to minimize NO_X emissions + Selective Catalytic Reduction (SCR) or equivalent technology, shall achieve 0.14 lb/MMBtu
Municipal Refuse-Fired Boilers	
< 250 MMBtu/hr	Combustion modifications to minimize NO_X emissions + Flue Gas Recirculation or equivalent technology, shall achieve 195 ppmv at 12 percent CO_2 (0.35 lb/MMBtu)

Source Type	Emission Limit
≥ 250 MMBtu/hr	Staged Combustion and Automatic Combustion Air Control + SCR or equivalent technology, shall achieve 0.18 lb/MMBtu
Internal Combustion Engines	
Compression Ignition	Timing Retard ≤ 4 degrees + Turbocharger with Intercooler or equivalent technology, shall achieve 490 ppmv at 15 percent O_2 (7.64 gram per bhp-hour (gm/bhp-hr))
Spark Ignition	Lean-Burn Technology or equivalent technology, shall achieve 1.0 gm/bhp-hr
Landfill or Digester Gas-Fired	Lean-Burn Technology or equivalent technology, shall achieve 1.25 gm/bhp-hr
Gas Turbines	
Simple Cycle – Natural Gas	
< 50 Megawatts	Combustion Modifications (for example, dry low-NO_X combustors) to minimize NO_X emissions or equivalent technology, shall achieve 25 ppmv at 15 percent O_2 Dry Basis
≥ 50 Megawatts	Combustion Modifications (for example, dry low-NO_X combustors) to minimize NO_X emissions or equivalent technology, shall achieve 9.0 ppmv at 15 percent O_2 Dry Basis
Combined Cycle – Natural Gas	
< 50 Megawatts	Dry Low-NO_X Combustors or equivalent technology, shall achieve 9.0 ppmv at 15 percent O_2 Dry Basis
≥ 50 Megawatts	Dry Low-NO_X Combustors + SCR or equivalent technology, shall achieve 3.0 ppmv at 15 percent O_2 Dry Basis
Simple Cycle – Distillate Oil Combustion	
< 50 Megawatts	Combustion Modifications and water injection to minimize NO_X emissions or equivalent technology, shall achieve 42 ppmv at 15 percent O_2 Dry Basis
≥ 50 Megawatts	Combustion Modifications and water injection to minimize NO_X emissions or equivalent technology, shall achieve 42 ppmv at 15 percent O_2 Dry Basis
Combined Cycle - Distillate Oil Combustion	
< 50 Megawatts	Dry Low-NO_X Combustors with water injection or equivalent technology, shall achieve 42 ppmv at 15 percent O_2 Dry Basis
≥ 50 Megawatts	Dry Low-NO_X Combustors, water injection, and SCR or equivalent technology, shall achieve 10 ppmv at 15 percent O_2 Dry Basis
Landfill Gas-Fired	Water or steam injection or low-NO_X turbine design or equivalent technology, shall achieve 25 ppmv at 15 percent O_2 Dry Basis
Fluidized Bed Combustion (FBC) Boiler	
Bubbling Bed	Selective Non-catalytic Reduction (SNCR) shall achieve 0.15 lbs/MMBtu
Circulating Bed	SNCR shall achieve 0.07 lbs/MMBtu
Other	
Recovery Furnaces	Fourth (4^{th}) level or air to recovery furnace/good combustion practices or equivalent technology, shall achieve 100 ppmv at 8 percent O_2 Dry Basis
Cement Kilns	Low-NO_X burners or equivalent technology, shall achieve 30 percent reduction from uncontrolled levels.
Lime Kilns	Combustion controls or equivalent technology, shall achieve 175 ppmv at 10 percent O_2 Dry Basis.

Source Type	Emission Limit
Fuel Combustion Sources burning any non-specified fuel not listed in Table above. (Examples include but are not limited to process heaters not meeting the definition of "boiler" in Regulation 61-62.1 Section I, dryers, furnaces, ovens, duct burners, incinerators, and smelters)	Low-NO_X burners or equivalent technology, shall achieve 30 percent reduction from uncontrolled levels.

SECTION IV - MONITORING, RECORD KEEPING, AND REPORTING REQUIREMENTS FOR NEW AFFECTED SOURCES

(A) Boilers

With the exception of fuel certification and tune-up requirements, compliance with required NO_X monitoring in 40 CFR Part 60 shall constitute compliance with the monitoring requirements in this section.

Affected sources that are not subject to 40 CFR Part 60 shall comply with the applicable requirements in this section.

(1) CEMS

(a) Except as allowed by the Department, the owner or operator of a boiler rated two hundred (200) MMBtu/hr or greater permitted for solid fuel, shall install, calibrate, maintain, and operate CEMS for measuring NO_X, and Oxygen (O_2) or Carbon Dioxide (CO_2) emissions discharged to the atmosphere, and shall record the output of the system.

(b) The CEMS required under this section shall be operated and data recorded during all periods of operation of the affected source except for CEMS breakdowns and repairs. Data is to be recorded during calibration checks and zero and span adjustments.

(c) The CEMS required under this section shall be installed, calibrated, maintained, and operated in accordance with approved methods in Regulation 61-62.60 or 61-62.72, or as approved by the Department.

(d) Excess Emissions

Excess emissions and monitoring systems performance reports shall be submitted semiannually. All reports shall be postmarked by the thirtieth (30^{th}) day following the end of each six (6) month period. Written reports of excess emissions shall include the following information:

(i) The magnitude of excess emissions, any conversion factor(s) used, the date and time of commencement and completion of each time period of excess emissions, the process operating time during the reporting period.

(ii) Specific identification of each period of excess emissions that occurs during malfunctions of the affected source. The nature and cause of any malfunction (if known), the corrective action taken, or preventative measures adopted.

(iii) The date and time identifying each period during which the continuous monitoring system was inoperative except for zero and span checks and the nature of the system repairs or adjustments.

(iv) When no excess emissions have occurred or the continuous monitoring system(s) have not been inoperative, repaired, or adjusted, such information shall be stated in the reports.

(2) Periodic Monitoring and/or Source Test

(a) Unless required to operate a CEMS, testing requirements apply to boilers rated thirty (30) MMBtu/hr or greater or permitted for solid fuels and boilers rated greater than one hundred (100) MMBtu/hr permitted for any other fuels.

(b) Except as allowed by the Department, an initial source test for NO_X emissions shall be conducted within one hundred and eighty (180) days after startup.

(c) Periodic source tests for NO_X shall be conducted every twenty-four (24) months, or as determined by the Department on a case by case basis in the permit condition for the affected source. Source tests will be used to show compliance with the NO_X standard.

(d) The Department reserves the right to require periodic source testing for any affected sources. All source testing shall be conducted in accordance with Regulation 61-62.1, Section IV.

(3) Fuel Certification

The owner or operator shall record monthly records of the amounts and types of each fuel combusted and maintain these records on site.

(4) Tune-ups

If the owner or operator of a boiler is required to comply with federal tune-up requirements in 40 CFR Part 63, then the federal requirements shall meet the compliance requirements of this paragraph. If the owner or operator of a boiler is not subject to the federal tune-up requirements (40 CFR Part 63), then the following requirements are applicable:

(a) The first tune-up shall be conducted no more than twenty-four (24) months from start-up of operation for new affected sources.

(b) The owner or operator shall perform tune-ups every twenty-four (24) months in accordance with manufacturer’s specifications or with good engineering practices.

(c) All tune-up records are required to be maintained on site and available for inspection by the Department for a period of five (5) years from the date generated.

(d) The owner or operator shall develop and retain a tune-up plan on file.

(5) Other Requirements

The owner or operator shall maintain records of the occurrence and duration of any malfunction in the operation of an affected source; any malfunction of the air pollution control equipment; and any periods during which a continuous monitoring system or monitoring device is inoperative.

(B) Internal Combustion Engines

With the exception of fuel certification and tune-up requirements, compliance with required NO_X monitoring in 40 CFR Part 60 shall constitute compliance with the monitoring requirements in this section.

Affected sources that are not subject to 40 CFR Part 60 shall comply with all applicable requirements in this section.

The owner or operator of an affected source shall comply with either (B)(1) or (B)(2) below.

(1) Manufacturer's Certification

(a) Operate and maintain the stationary internal combustion engine and control device according to the manufacturer's emission-related written instructions;

(b) Change only those emission-related settings that are permitted by the manufacturer.

(2) Periodic Monitoring and/or Source Test

(a) Except as allowed by the Department, an initial source test for NO_X shall be conducted within one hundred eighty (180) days after startup.

(b) Periodic source tests for NO_X shall be conducted every twenty-four (24) months, or as determined by the Department on a case by case basis in the permit condition for the affected source. Source tests will be used to show compliance with the NO_X standard.

(c) The owner or operator shall operate the affected source(s) within the parameter(s) established during the most recent compliant source tests. A copy of the most recent Department issued source test summary letter(s) that established the parameter(s) shall be maintained with the required permit.

(d) The Department reserves the right to require periodic source testing for any affected sources. All source testing shall be conducted in accordance with Regulation 61-62.1, Section IV.

(3) Tune-Ups

If the owner or operator of an internal combustion engine is required to comply with federal requirements in 40 CFR Part 63 for the internal combustion engine, then the federal requirements shall meet the tune-up requirements of this section. If the owner or operator of an internal combustion engine is not subject to the federal tune-up requirements (40 CFR Part 63), then the following requirements are applicable:

(a) The owner or operator shall perform tune-ups every twenty-four (24) months in accordance with manufacturer's specifications or with good engineering practices.

(b) All tune-up records are required to be maintained on site and available for inspection by the Department for a period of five (5) years from the date generated.

(c) The owner or operator shall develop and retain a tune-up plan on file.

(4) Fuel Certification

The owner or operator shall record monthly the amounts and types of each fuel combusted by the affected sources and maintain these records on site.

(5) Other Requirements

The owner or operator shall maintain records of the occurrence and duration of any malfunction in the operation of an affected source; any malfunction of the air pollution control equipment; and any periods during which a continuous monitoring system or monitoring device is inoperative.

(C) Turbines

With the exception of fuel certification and tune-up requirements, compliance with required NO_X monitoring in 40 CFR Part 60 shall constitute compliance with the monitoring requirements in this section.

Affected sources that are not subject to 40 CFR Part 60 shall comply with all applicable requirements in this section.

The owner or operator of an affected source shall comply with either (C)(1) or (C)(2) below.

(1) CEMS

(a) Except as allowed by the Department, the owner or operator shall install, calibrate, maintain, and operate CEMS on the turbine for measuring NO_X, and Oxygen (O_2) or Carbon Dioxide (CO_2) emissions discharged to the atmosphere, and shall record the output of the system.

(b) The CEMS required under this section shall be operated and data recorded during all periods of operation of the affected source except for CEMS breakdowns and repairs. Data is to be recorded during calibration checks and zero and span adjustments.

(c) The CEMS required under this section shall be installed, calibrated, maintained, and operated in accordance with approved methods in Regulation 61-62.60 or 61-62.72, or as approved by the Department.

(d) Excess Emissions

Excess emissions and monitoring systems performance reports shall be submitted semiannually. All reports shall be postmarked by the thirtieth (30^{th}) day following the end of each six (6) month period. Written reports of excess emissions shall include the following information:

(i) The magnitude of excess emissions, any conversion factor(s) used, the date and time of commencement and completion of each time period of excess emissions, and the process operating time during the reporting period.

(ii) Specific identification of each period of excess emissions that occurs during startups, shutdowns, and malfunctions of the affected source. The nature and cause of any malfunction (if known), the corrective action taken, or preventative measures adopted.

(iii) The date and time identifying each period during which the continuous monitoring system was inoperative except for zero and span checks and the nature of the system repairs or adjustments.

(iv) When no excess emissions have occurred or the continuous monitoring system(s) have not been inoperative, repaired, or adjusted, such information shall be stated in the reports.

(2) Parametric Monitoring

(a) Unless required to operate a CEMS, the owner or operator using water or steam injection to control NO_X shall install, calibrate, maintain, and operate a continuous monitoring system to monitor and record the fuel consumption and the ratio of water or steam to fuel being fired in the turbine.

(b) Unless required to operate a CEMS, the owner or operator using a diffusion flame turbine without add-on selective catalytic reduction controls (SCR) to control NO_X, shall define at least four parameters indicative of the unit's NO_X formation characteristics and shall monitor these parameters continuously.

(c) Unless required to operate a CEMS, for any lean premix stationary combustion turbine, the owner or operator shall continuously monitor the appropriate parameters to determine whether the unit is operating in low-NO_X mode.

(d) Unless required to operate a CEMS, for any turbine that uses SCR to reduce NO_X, the owner or operator shall continuously monitor appropriate parameters to verify the proper operation of the emission controls.

(3) Periodic Monitoring and/or Source Test

(a) This requirement only applies to turbines not required to operate a CEMS.

(b) The steam or water to fuel ratio or other parameters that are continuously monitored as described in this section shall be monitored during the performance test required under this section to establish acceptable values and ranges. The owner or operator may supplement the performance test data with engineering analyses, design specifications, manufacturer's recommendations, and other relevant information to define the acceptable parametric ranges more precisely. The owner or operator shall develop and keep on-site a parameter monitoring plan which explains the procedures used to document proper operation of the NO_X emission controls. The plan shall include the parameter(s) monitored and the acceptable range(s) of the parameter(s) as well as the basis for designating the parameter(s) and acceptable range(s). Any supplemental data such as engineering analyses, design specifications, manufacturer's recommendations, and other relevant information shall be included in the monitoring plan.

(c) Except as allowed by the Department, an initial source test for NO_X emissions shall be conducted within one hundred eighty (180) days after startup.

(d) Periodic source tests for NO_X shall be conducted every twenty-four (24) months, or as determined by the Department on a case by case basis in the permit condition for the affected source. Source tests will be used to show compliance with the NO_X standard.

(e) The Department reserves the right to require periodic source testing for any affected sources. All source testing shall be conducted in accordance with Regulation 61-62.1, Section IV.

(4) Tune-Ups

(a) The owner or operator shall perform tune-ups every twenty-four (24) months in accordance with manufacturer's specifications or with good engineering practices.

(b) All tune-up records are required to be maintained on site and available for inspection by the Department for a period of five (5) years from the date generated.

(c) The owner or operator shall develop and retain a tune-up plan on file.

(5) Fuel Certification

The owner or operator shall record monthly the amounts and types of each fuel combusted by the affected sources and maintain these records on site.

(6) Other Requirements

The owner or operator shall maintain records of the occurrence and duration of any malfunction in the operation of an affected source; any malfunction of the air pollution control equipment; or any periods during which a continuous monitoring system or monitoring device is inoperative.

(D) All Other Affected Source Types

With the exception of fuel certification and tune-up requirements, compliance with required NO_X monitoring in 40 CFR Part 60 shall constitute compliance with the monitoring requirements in this section.

If the owner or operator is not required to comply with federal requirements in 40 CFR Part 60 for monitoring NO_X, then the monitoring requirements for the affected source shall be established on a case by case basis.

(1) Tune-Ups

(a) The owner or operator of a combustion source shall perform tune-ups every twenty-four (24) months in accordance with manufacturer's specifications or with good engineering practices.

(b) All tune-up records are required to be maintained on site and available for inspection by the Department for a period of five (5) years from the date generated.

(c) The owner or operator shall develop and retain a tune-up plan on file.

(2) Periodic Monitoring and/or Source Test

(a) Except as allowed by the Department, an initial source test for NO_X shall be conducted within one hundred eighty (180) days after startup.

(b) Periodic source tests for NO_X shall be conducted every twenty-four (24) months, or as determined by the Department on a case by case basis in the permit condition for the affected source. Source tests will be used to show compliance with the NO_X standard.

(c) The Department reserves the right to require periodic source tests for any affected sources. All source testing shall be conducted in accordance with Regulation 61-62.1, Section IV.

(3) Fuel Certification

The owner or operator shall record and maintain monthly records of the amounts and types of each fuel combusted by the affected sources and maintain these records on site.

(4) Other Requirements

The owner or operator shall maintain records of the occurrence and duration of any malfunction in the operation of an affected source; any malfunction of the air pollution control equipment; or any periods during which a continuous monitoring system or monitoring device is inoperative.

SECTION V - STANDARD REQUIREMENTS FOR EXISTING AFFECTED SOURCES

(A) For those affected sources subject to the requirements of this regulation as defined in Section I(A)(2) above where an existing burner assembly is replaced after the effective date of this regulation, the burner assembly shall be replaced with a low-NO_X burner assembly or equivalent technology, and shall achieve a thirty (30) percent reduction from uncontrolled NO_X emission levels based upon manufacturer's specifications. An exemption from this requirement shall be granted when a single burner assembly is being replaced in an affected source with multiple burners due to non-routine maintenance.

(B) For those sources defined in Section I(A)(2) above where an existing burner assembly is replaced after the effective date of this regulation, the owner or operator shall notify and register the replacement with the Department in accordance with Section VI below.

(C) An affected source may request an alternative control methodology to the one specified in paragraph (A) above of this section provided that they can demonstrate to the Department why the NO_X control limits specified are not economically or technically feasible for this specific circumstance. The Department reserves the right to request that the owner or operator submit additional information as necessary for the alternative control methodology determination. Alternative control methodologies granted under this part are not effective until notification is submitted to and approved by the Department.

SECTION VI - NOTIFICATION REQUIREMENTS FOR EXISTING AFFECTED SOURCES

(A) Burner Assembly Replacement Notifications for Existing Affected Sources

(1) Except for those affected sources that wish to request an alternative control methodology as specified in Section V(C) above, the notification requirements specified in this section shall apply only to existing affected sources as defined in Section I(A)(2) above where an existing burner assembly is replaced after the effective date of this regulation.

(2) Within seven (7) days of replacing an existing burner assembly, the owner or operator shall submit written notification to register the replacement unit with the Department.

(3) Notification shall satisfy the permitting requirements consistent with Regulation 61-62.1, Section II(a).

(4) Notification shall contain replacement unit information as requested in the format provided by the Department. Replacement unit information shall include, at a minimum, all affected units at the source and the date the replacement unit(s) commenced operation.

(5) Those affected sources that wish to receive an emission reduction credit for the control device will be required to submit a permit application prior to replacement of the burner assembly(s).

SECTION VII – TUNE-UP REQUIREMENTS FOR EXISTING SOURCES

(A) The owner or operator shall perform tune-ups every twenty-four (24) months in accordance with manufacturer's specifications or with good engineering practices. Tune-ups shall be conducted no more than twenty-four (24) months from replacement of a burner assembly for affected existing sources. Each subsequent tune-up shall be conducted no more than twenty-four (24) months after the previous tune-up.

(B) All tune-up records are required to be maintained on site and available for inspection by the Department for a period of five (5) years from the date generated.

(C) The owner or operator shall develop and retain a tune-up plan on file.

61-62.5. Standard No. 7. Prevention of Significant Deterioration.

(A)(1) **Reserved.**

(2) **Applicability procedures.**

(a) The requirements of this regulation apply to the construction of any new major stationary source (as defined in paragraph (B)(32)) or any project at an existing major stationary source in an area designated as attainment or unclassifiable under 40 Code of Federal Regulations (CFR) 81.341.

(b) The requirements of paragraphs (J) through (R) apply to the construction of any new major stationary source or the major modification of any existing major stationary source, except as this section otherwise provides.

(c) No new major stationary source or major modification to which the requirements of paragraphs (J) through (R)(5) apply shall begin actual construction without a permit that states that the major stationary source or major modification will meet those requirements. The Department has authority to issue any such permit.

(d) The requirements of the program will be applied in accordance with the principles set out in paragraphs (A)(2)(d)(i) through (A)(2)(d)(vi).

(i) Except as otherwise provided in paragraph (A)(2)(e), and consistent with the definition of major modification contained in paragraph (B)(30), a project is a major modification for a regulated New Source Review (NSR) pollutant if it causes two types of emissions increases – a significant emissions increase (as defined in paragraph (B)(50)), and a significant net emissions increase (as defined in paragraphs (B)(34) and (B)(49)). The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.

(ii) The procedure for calculating (before beginning actual construction) whether a significant emissions increase (that is, the first step of the process) will occur depends upon the type of emissions units being modified, according to paragraphs (A)(2)(d)(iii) through (A)(2)(d)(vi). The procedure for calculating (before beginning actual construction) whether a significant net emissions increase will occur at the major stationary source (that is, the second step of the process) is contained in the definition in paragraph (B)(34). Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

(iii) **Actual-to-projected-actual applicability test for projects that only involve existing emissions units.** A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the projected actual emissions (as defined in paragraph (B)(41)) and the baseline actual emissions (as defined in paragraphs (B)(4)(a) and (B)(4)(b)), for each existing emissions unit, equals or exceeds the significant amount for that pollutant (as defined in paragraph (B)(49)).

(iv) **Actual-to-potential test for projects that only involve construction of a new emissions unit(s).** A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the potential to emit (as defined in paragraph (B)(37)) from each new emissions unit following completion of the project and the baseline actual emissions (as defined in paragraph (B)(4)(c)) of these units before the project equals or exceeds the significant amount for that pollutant (as defined in paragraph (B)(49)).

(v) **[Reserved]**

(vi) **Hybrid test for projects that involve multiple types of emissions units.** A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in paragraphs (A)(2)(d)(iii) and (A)(2)(d)(iv) as applicable with respect to each emissions unit, for each type of emissions unit equals or exceeds, the significant amount for that pollutant (as defined in paragraph (B)(49)).

(e) For any major stationary source for a Plantwide Applicability Limitation (PAL) for a regulated NSR pollutant, the major stationary source shall comply with the requirements under Section (AA).

(B) Definitions. For the purposes of this regulation:

(1)(a) **Actual emissions** means the actual rate of emissions of a regulated NSR pollutant from an emissions unit, as determined in accordance with paragraphs (B)(1)(b) through (B)(1)(d), except that this definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a PAL under Section (AA). Instead, paragraphs (B)(41) and (B)(4) shall apply for those purposes.

(b) In general, actual emissions as of a particular date shall equal the average rate, in tons per year , at which the unit actually emitted the pollutant during a consecutive twenty-four (24)-month period which precedes the particular date and which is representative of normal source operation. The Department shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(c) The Department may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(d) For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

(2) **Adverse impact on visibility** means visibility impairment which interferes with the management, protection, preservation or enjoyment of the visitor's visual experience of the Class I area. This determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency and time of visibility impairment, and how these factors correlate with (1) times of visitor use of the Class I area, and (2) the frequency and timing of natural conditions that reduce visibility.

(3) **Allowable emissions** means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

(a) The applicable standards as set forth in 40 CFR Parts 60 and 61;

(b) The applicable State Implementation Plan emissions limitation, including those with a future compliance date; or

(c) The emissions rate specified as a federally enforceable permit condition, including those with a future compliance date.

(4) **Baseline actual emissions** means the rate of emissions, in tons per year, of a regulated NSR pollutant, as determined in accordance with paragraphs (B)(4)(a) through (B)(4)(d).

(a) For any existing electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive twenty-four (24)-month period selected by the owner or operator within the five (5)-year period immediately preceding when the owner or operator begins actual construction of the project. The Department shall allow the use of a different time period upon a determination that it is more representative of normal source operation.

(i) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(ii) The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive twenty-four (24)-month period.

(iii) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive twenty-four (24)-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive twenty-four (24)-month period can be used for each regulated NSR pollutant.

(iv) The average rate shall not be based on any consecutive twenty-four (24)-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by paragraph (B)(4)(a)(ii).

(b) For an existing emissions unit (other than an electric utility steam generating unit), baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive twenty-four (24)-month period selected by the owner or operator within the ten (10)-year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date a complete permit application is received by the Department for a permit required under this section or under a plan approved by the Administrator, whichever is earlier, except that the ten (10)-year period shall not include any period earlier than November 15, 1990. The Department reserves the right to determine if the twenty-four (24)-month period selected is appropriate.

(i) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(ii) The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive twenty-four (24)-month period.

(iii) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply, had such major stationary source been required to comply with such limitations during the consecutive twenty-four (24)-month period. However, if an emission limitation is part of a maximum achievable control technology standard that the Administrator proposed or promulgated under 40 CFR Part 63, the baseline actual emissions need only be adjusted if the State has taken credit for such emissions reductions in an attainment demonstration or maintenance plan consistent with the requirements of 40 CFR 51.165(a)(3)(ii)(G).

(iv) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive twenty-four (24)-month period must be used to determine the baseline actual emissions for all the emissions units being changed. A different consecutive twenty-four (24)-month period can be used for each regulated NSR pollutant.

(v) The average rate shall not be based on any consecutive twenty-four (24)-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by paragraphs (B)(4)(b)(ii) and (B)(4)(b)(iii).

(c) For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit.

(d) For a PAL for a stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in paragraph (B)(4)(a), for other existing emissions units in accordance with the procedures contained in paragraph (B)(4)(b), and for a new emissions unit in accordance with the procedures contained in paragraph (B)(4)(c).

(5)(a) **Baseline area** means any intrastate area (and every part thereof) designated as attainment or unclassifiable under Section 107(d)(1)(A)(ii) or (iii) of the Clean Air Act in which the major source or major modification establishing the minor source baseline date would construct or would have an air quality impact for the pollutant for which the baseline date is established, as follows: Equal to or greater than one (1) microgram(s) per cubic meter ($\mu g/m^3$) (annual average) for SO_2, NO_2, or PM_{10}; or equal or greater than 0.3 $\mu g/m^3$ (annual average) for $PM_{2.5}$.

(b) Area redesignations under Section 107(d)(1)(A)(ii) or 107(d)(1)(A)(iii) of the Clean Air Act cannot intersect or be smaller than the area of impact of any major stationary source or major modification which:

(i) Establishes a minor source baseline date; or

(ii) Is subject to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.166 and would be constructed in the same state as the state proposing the redesignation.

(c) Any baseline area established originally for the TSP increments shall remain in effect and shall apply for purposes of determining the amount of available PM_{10} increments, except that such baseline area shall not remain in effect if the Department rescinds the corresponding minor source baseline date in accordance with paragraph (B)(31)(d).

(6)(a) **Baseline concentration** means that ambient concentration level that exists in the baseline area at the time of the applicable minor source baseline date. A baseline concentration is determined for each pollutant for which a minor source baseline date is established and shall include:

(i) The actual emissions, as defined in paragraph (B)(1), representative of sources in existence on the applicable minor source baseline date, except as provided in paragraph (B)(6)(b); and

(ii) The allowable emissions of major stationary sources that commenced construction before the major source baseline date, but were not in operation by the applicable minor source baseline date.

(b) The following will not be included in the baseline concentration and will affect the applicable maximum allowable increase(s):

(i) Actual emissions, as defined in paragraph (B)(1), from any major stationary source on which construction commenced after the major source baseline date; and

(ii) Actual emissions increases and decreases, as defined in paragraph (B)(1), at any stationary source occurring after the minor source baseline date.

(7) **Begin actual construction** means, in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying underground pipework and construction of permanent storage structures. With respect to a change in method of operations, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

(8) **Best available control technology (BACT)** means an emissions limitation (including a visible emission standard) based on the maximum degree of reduction for each pollutant subject to regulation under the Clean Air Act which would be emitted from any proposed major stationary source or major modification which the Department, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of BACT result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR Parts 60 and 61. If the Department determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination thereof, may be prescribed instead to satisfy the requirement for the application of BACT. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results.

(9)(a) **Building, structure, facility, or installation** means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (that is, which have the same first two digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101-0066 and 003-005-00716-0, respectively).

(b) Notwithstanding the provisions of paragraph (B)(9)(a), building, structure, facility, or installation means, for onshore activities under Standard Industrial Classification (SIC) Major Group 13: Oil and Gas Extraction, all of the pollutant-emitting activities included in Major Group 13 that are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant emitting activities shall be considered adjacent if they are located on the same surface site; or if they are located on surface sites that are located within one-fourth (1/4) of a mile of one another (measured from the center of the equipment on the surface site) and they share equipment. Shared equipment includes, but is not limited to, produced fluids storage tanks, phase separators, natural gas dehydrators or emissions control devices. Surface site, as used in this paragraph (b)(9)(b), has the same meaning as in 40 CFR 63.761.

(10) **Clean coal technology** means any technology, including technologies applied at the precombustion, combustion, or post combustion stage, at a new or existing facility which will achieve significant reductions in air emissions of sulfur dioxide or nitrogen oxides associated with the utilization of coal in the generation of electricity, or process steam which was not in widespread use as of November 15, 1990.

(11) **Clean coal technology demonstration project** means a project using funds appropriated under the heading "Department of Energy-Clean Coal Technology," up to a total amount of $2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency. The federal contribution for a qualifying project shall be at least twenty (20) percent of the total cost of the demonstration project.

(12) **[Reserved]**

(13) **Commence** means, as applied to construction of a major stationary source or major modification that the owner or operator has all necessary preconstruction approvals or permits and either has:

(a) Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(b) Entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

(14) **Complete** means, in reference to an application for a permit, that the application contains all of the information necessary for processing the application.

(15) **Construction** means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) that would result in a change in emissions.

(16) **Continuous emissions monitoring system (CEMS)** means all of the equipment that may be required to meet the data acquisition and availability requirements of this regulation, to sample, condition (if applicable), analyze, and provide a record of emissions on a continuous basis.

(17) **Continuous emissions rate monitoring system (CERMS)** means the total equipment required for the determination and recording of the pollutant mass emissions rate (in terms of mass per unit of time).

(18) **Continuous parameter monitoring system (CPMS)** means all of the equipment necessary to meet the data acquisition and availability requirements of this regulation, to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O_2 or CO_2 concentrations), and to record average operational parameter value(s) on a continuous basis.

(19) **Electric utility steam generating unit** means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than twenty-five (25) megawatt (MW) electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

(20) **Emissions unit** means any part of a stationary source that emits or would have the potential to emit any regulated NSR pollutant and includes an electric utility steam generating unit as defined in paragraph (B)(19). For purposes of this regulation, there are two types of emissions units as described in paragraphs (B)(20)(a) and (B)(20)(b).

(a) A new emissions unit is any emissions unit that is (or will be) newly constructed and that has existed for less than two (2) years from the date such emissions unit first operated.

(b) An existing emissions unit is any emissions unit that does not meet the requirements in paragraph (B)(20)(a). A replacement unit, as defined in paragraph (B)(45), is an existing emissions unit.

(21) **Federal Land Manager** means, with respect to any lands in the United States, the Secretary of the department with authority over such lands.

(22) **Federally enforceable** means all limitations and conditions which are enforceable by the Administrator, including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within any applicable State Implementation Plan, any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Part 51, Subpart I, including operating permits issued under an EPA-approved program that is incorporated into the State implementation plan and expressly requires adherence to any permit issued under such program.

(23) **Fugitive emissions** means those emissions to the outdoor environment which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(24) **High terrain** means any area having an elevation 900 feet or more above the base of the stack of a source.

(25) **Indian Governing Body** means the governing body of any tribe, band, or group of Indians subject to the jurisdiction of the United States and recognized by the United States as possessing power of self government.

(26) **Indian Reservation** means any federally recognized reservation established by Treaty, Agreement, Executive Order, or Act of Congress.

(27) **Innovative control technology** means any system of air pollution control that has not been adequately demonstrated in practice, but would have a substantial likelihood of achieving greater continuous emissions reduction than any control system in current practice or of achieving at least comparable reductions at lower cost in terms of energy, economics, or non-air quality environmental impacts.

(28) **Low terrain** means any area other than high terrain.

(29) **Lowest achievable emission rate (LAER)** is as defined in paragraph (B)(20) of Regulation 61-62.5 Standard 7.1, "Nonattainment New Source Review."

(30)(a) **Major modification** means any physical change in or change in the method of operation of a major stationary source that would result in: a significant emissions increase (as defined in paragraph (B)(50)) of a regulated NSR pollutant (as defined in paragraph (B)(44)); and a significant net emissions increase of that pollutant from the major stationary source.

(b) Any significant emissions increase (as defined in paragraph (B)(50)) from any emissions units or net emissions increase (as defined in paragraph (B)(34)) at a major stationary source that is significant for volatile organic compounds (VOCs) or nitrogen oxides shall be considered significant for ozone.

(c) A physical change or change in the method of operation shall not include:

(i) Routine maintenance, repair and replacement;

(ii) Use of an alternative fuel or raw material by reason of an order under Sections 2(a) and 2(b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

(iii) Use of an alternative fuel by reason of an order or rule under Section 125 of the Clean Air Act;

(iv) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(v) Use of an alternative fuel or raw material by a stationary source which:

(1) The source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975 pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Part 51, Subpart I or 40 CFR 51.166; or

(2) The source is approved to use under any permit issued under 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.166;

(vi) An increase in the hours of operation or in the production rate, unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975, pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Part 51, Subpart I or 40 CFR 51.166.

(vii) Any change in ownership at a stationary source

(viii) [Reserved]

(ix) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

(1) The State Implementation Plan for the state in which the project is located, and

(2) Other requirements necessary to attain and maintain the National Ambient Air Quality Standards during the project and after it is terminated.

(x) The installation or operation of a permanent clean coal technology demonstration project that constitutes repowering, provided that the project does not result in an increase in the potential to emit of any regulated pollutant emitted by the unit. This exemption shall apply on a pollutant-by-pollutant basis.

(xi) The reactivation of a very clean coal-fired electric utility steam generating unit.

(d) This definition shall not apply with respect to a particular regulated NSR pollutant when the major stationary source is complying with the requirements under Section (AA) for a PAL for that pollutant. Instead, the definition at paragraph (AA)(2)(h) shall apply.

(e) [Reserved]

(31)(a) **Major source baseline date** means:

(i) In the case of PM_{10} and sulfur dioxide, January 6, 1975;

(ii) In the case of nitrogen dioxide, February 8, 1988; and

(iii) In the case of $PM_{2.5}$, October 20, 2010.

(b) **Minor source baseline date** means the earliest date after the trigger date on which a major stationary source or a major modification subject to 40 CFR 52.21 or to regulations approved pursuant to 40 CFR 51.166 submits a complete application under the relevant regulations. The trigger date is:

(i) In the case of PM_{10} and sulfur dioxide, August 7, 1977;

(ii) In the case of nitrogen dioxide, February 8, 1988; and

(iii) In the case of $PM_{2.5}$, October 20, 2011.

(c) The baseline date is established for each pollutant for which increments or other equivalent measures have been established if:

(i) The area in which the proposed source or modification would construct is designated as attainment or unclassifiable under Section 107(d)(1)(A)(ii) or (iii) of the Clean Air Act for the pollutant on the date of its complete application under 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.166; and

(ii) In the case of a major stationary source, the pollutant would be emitted in significant amounts, or, in the case of a major modification, there would be a significant net emissions increase of the pollutant.

(d) Any minor source baseline date established originally for the TSP increments shall remain in effect and shall apply for purposes of determining the amount of available PM_{10} increments, except that the Department shall rescind a minor source baseline date where it can be shown, to the satisfaction of the Department, that the emissions increase from the major stationary source, or net emissions increase from the major modification, responsible for triggering that date did not result in a significant amount of PM_{10} emissions.

(32)(a) **Major stationary source** means:

(i) Any of the following stationary sources of air pollutants which emits, or has the potential to emit, one hundred (100) tons per year or more of any regulated NSR pollutant: Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input, coal cleaning plants (with thermal dryers), kraft pulp mills, portland cement plants, primary zinc smelters, iron and steel mill plants, primary aluminum ore reduction plants (with thermal dryers), primary copper smelters, municipal incinerators capable of charging more

than 250 tons of refuse per day, hydrofluoric, sulfuric, and nitric acid plants, petroleum refineries, lime plants, phosphate rock processing plants, coke oven batteries, sulfur recovery plants, carbon black plants (furnace process), primary lead smelters, fuel conversion plants, sintering plants, secondary metal production plants, chemical process plants (which does not include ethanol production facilities that produce ethanol by natural fermentation included in North American Industrial Classification System (NAICS) codes 325193 or 312140), fossil fuel boilers (or combinations thereof) totaling more than 250 million British thermal units per hour heat input, petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels, taconite ore processing plants, glass fiber processing plants, and charcoal production plants;

(ii) Notwithstanding the stationary source size specified in paragraph (B)(32)(a)(i), any stationary source which emits, or has the potential to emit, 250 tons per year or more of a regulated NSR pollutant; or

(iii) Any physical change that would occur at a stationary source not otherwise qualifying under paragraph (B)(32) as a major stationary source, if the changes would constitute a major stationary source by itself.

(b) A major stationary source that is major for VOCs or nitrogen oxides shall be considered major for ozone.

(c) The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this regulation whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:

(i) Coal cleaning plants (with thermal dryers);

(ii) Kraft pulp mills;

(iii) Portland cement plants;

(iv) Primary zinc smelters;

(v) Iron and steel mills;

(vi) Primary aluminum ore reduction plants;

(vii) Primary copper smelters;

(viii) Municipal incinerators capable of charging more than 250 tons of refuse per day;

(ix) Hydrofluoric, sulfuric, or nitric acid plants;

(x) Petroleum refineries;

(xi) Lime plants;

(xii) Phosphate rock processing plants;

(xiii) Coke oven batteries;

(xiv) Sulfur recovery plants;

(xv) Carbon black plants (furnace process);

(xvi) Primary lead smelters;

(xvii) Fuel conversion plants;

(xviii) Sintering plants;

(xix) Secondary metal production plants;

(xx) Chemical process plants – The term chemical processing plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140;

(xxi) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;

(xxii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(xxiii) Taconite ore processing plants;

(xxiv) Glass fiber processing plants;

(xxv) Charcoal production plants;

(xxvi) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; and

(xxvii) Any other stationary source category which, as of August 7, 1980, is being regulated under Section 111 or 112 of the Clean Air Act.

(33) **Necessary preconstruction approvals or permits** means those permits or approvals required under federal air quality control laws and regulations and those air quality control laws and regulations which are part of the applicable State Implementation Plan.

(34)(a) **Net emissions increase** means, with respect to any regulated NSR pollutant emitted by a major stationary source, the amount by which the sum of the following exceeds zero:

(i) The increase in emissions from a particular physical change or change in method of operation at a stationary source as calculated pursuant to paragraph (A)(2)(d); and

(ii) Any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable. Baseline actual emissions for calculating increases and decreases under this paragraph (B)(34)(a)(ii) shall be determined as provided in paragraph (B)(4), except that paragraphs (B)(4)(a)(iii) and (B)(4)(b)(iv) shall not apply.

(b) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between:

(i) The date five (5) years before construction on the particular change commences; and

(ii) The date that the increase from the particular change occurs.

(c) An increase or decrease in actual emissions is creditable only if:

(i) The Department has not relied on it in issuing a permit for the source under this section, which permit is in effect when the increase in actual emissions from the particular change occurs; and

(ii) [Reserved]

(d) An increase or decrease in actual emissions of sulfur dioxide, particulate matter, or nitrogen oxide that occurs before the applicable minor source baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available.

(e) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(f) A decrease in actual emissions is creditable only to the extent that:

(i) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(ii) It is federally enforceable at and after the time that actual construction on the particular change begins; and

(iii) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(g) [Reserved]

(h) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

(i) Paragraph (B)(1)(b) shall not apply for determining creditable increases and decreases.

(35) **[Reserved]**

(36) **Pollution prevention** means any activity that through process changes, product reformulation or redesign, or substitution of less polluting raw materials, eliminates or reduces the release of air pollutants (including fugitive emissions) and other pollutants to the environment prior to recycling, treatment, or disposal; it does not mean recycling (other than certain "in-process recycling" practices), energy recovery, treatment, or disposal.

(37) **Potential to emit** means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

(38) **Predictive emissions monitoring system (PEMS)** means all of the equipment necessary to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O_2 or CO_2 concentrations), and calculate and record the mass emissions rate (for example, pounds per hour) on a continuous basis.

(39) **Prevention of Significant Deterioration (PSD) program** means the EPA-implemented major source preconstruction permit programs or a major source preconstruction permit program that has been approved by the Administrator and incorporated into the State Implementation Plan pursuant to 40 CFR 51.166 to implement the requirements of that section. Any permit issued under such a program is a major NSR permit.

(40) **Project** means a physical change in, or change in the method of operation of, an existing major stationary source.

(41)(a) **Projected actual emissions** means the maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated NSR pollutant in any one of the five (5) years (twelve (12)-month period) following the date the unit resumes regular operation after the project, or in any one of the ten (10) years following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit that regulated NSR pollutant and full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the major stationary source.

(b) In determining the projected actual emissions under paragraph (B)(41)(a) (before beginning actual construction), the owner or operator of the major stationary source:

(i) Shall consider all relevant information, including but not limited to, historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, the company's filings with the state or federal regulatory authorities, and compliance plans under the approved State Implementation Plan; and

(ii) Shall include fugitive emissions to the extent quantifiable and emissions associated with startups, shutdowns, and malfunctions; and

(iii) Shall exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive twenty-four (24)-month period used to establish the baseline actual emissions under paragraph (B)(4) and that are also unrelated to the particular project, including any increased utilization due to product demand growth; or

(iv) In lieu of using the method set out in paragraph (B)(41)(b)(i) through (B)(41)(b)(iii), may elect to use the emissions unit's potential to emit, in tons per year, as defined under paragraph (B)(37).

(42) **Reactivation of a very clean coal-fired electric utility steam generating unit** means any physical change or change in the method of operation associated with the commencement of commercial operations by a coal-fired utility unit after a period of discontinued operation where the unit:

(a) Has not been in operation for the two (2)-year period prior to the enactment of the Clean Air Act Amendments of 1990, and the emissions from such unit continue to be carried in the permitting authority's emissions inventory at the time of enactment;

(b) Was equipped prior to shut-down with a continuous system of emissions control that achieves a removal efficiency for sulfur dioxide of no less than eight-five (85) percent and a removal efficiency for particulates of no less than ninety-eight (98) percent;

(c) Is equipped with low-NO_X burners prior to the time of commencement of operations following reactivation; and

(d) Is otherwise in compliance with the requirements of the Clean Air Act.

(43) **Reasonably available control technology (RACT)** is as defined in 40 CFR 51.100(o).

(44) **Regulated NSR pollutant,** for purposes of this regulation, means the following:

(a) Any pollutant for which a national ambient air quality standard has been promulgated. This includes, but is not limited to, the following:

(i) $PM_{2.5}$ emissions and PM_{10} emissions shall include gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures. On or after January 1, 2011, such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for $PM_{2.5}$ and PM_{10} in PSD permits. Compliance with emissions limitations for $PM_{2.5}$ and PM_{10} issued prior to this date shall not be based on condensable particulate matter unless required by the terms and conditions of the permit or the applicable implementation plan. Applicability determinations made prior to this date without accounting for condensable particulate matter shall not be considered in violation of this section unless the applicable implementation plan required condensable particulate matter to be included;

(ii) Any pollutant identified under this paragraph as a constituent or precursor to a pollutant for which a national ambient air quality standard has been promulgated. Precursors identified by the Administrator for purposes of NSR are the following:

(1) Volatile organic compounds and nitrogen oxides are precursors to ozone in all attainment and unclassifiable areas.

(2) Sulfur dioxide is a precursor to $PM_{2.5}$ in all attainment and unclassifiable areas.

(3) Nitrogen oxides are presumed to be precursors to $PM_{2.5}$ in all attainment and unclassifiable areas, unless the State demonstrates to the Administrator's satisfaction or EPA demonstrates that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to that area's ambient $PM_{2.5}$ concentrations.

(4) Volatile organic compounds are presumed not to be precursors to $PM_{2.5}$ in any attainment or unclassifiable area, unless the State demonstrates to the Administrator's satisfaction or EPA demonstrates that emissions of volatile organic compounds from sources in a specific area are a significant contributor to that area's ambient $PM_{2.5}$ concentrations.

(b) Any pollutant that is subject to any standard promulgated under Section 111 of the Clean Air Act;

(c) Any Class I or II substance subject to a standard promulgated under or established by Title VI of the Clean Air Act; or

(d) Any pollutant that otherwise is subject to regulation under the Clean Air Act; except that any or all hazardous air pollutants either listed in Section 112 of the Clean Air Act or added to the list pursuant to Section 112(b)(2) of the Clean Air Act, which have not been delisted pursuant to Section 112(b)(3) of the Clean Air Act, are not regulated NSR pollutants unless the listed hazardous air pollutant is also regulated as a constituent or precursor of a general pollutant listed under Section 108 of the Clean Air Act.

(e) **[Reserved]**

(45) **Replacement unit** means an emissions unit for which all the criteria listed in paragraphs (B)(45)(a) through (B)(45)(d) are met. No creditable emission reductions shall be generated from shutting down the existing emissions unit that is replaced.

(a) The emissions unit is a reconstructed unit within the meaning of 40 CFR 60.15(b)(1), or the emissions unit completely takes the place of an existing emissions unit.

(b) The emissions unit is identical to or functionally equivalent to the replaced emissions unit.

(c) The replacement does not alter the basic design parameters of the process unit.

(d) The replaced emissions unit is permanently removed from the major stationary source, otherwise permanently disabled, or permanently barred from operation by a permit that is enforceable as a practical matter. If the replaced emissions unit is brought back into operation, it shall constitute a new emissions unit.

(46)(a) **Repowering** means replacement of an existing coal-fired boiler with one of the following clean coal technologies: atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magnetohydrodynamics, direct and indirect coal-fired turbines, integrated gasification fuel cells, or as determined by the Administrator, in consultation with the Secretary of Energy, a derivative of one or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990.

(b) Repowering shall also include any oil and/or gas-fired unit which has been awarded clean coal technology demonstration funding as of January 1, 1991, by the Department of Energy.

(c) The Department shall give expedited consideration to permit applications for any source that satisfies the requirements of this subsection and is granted an extension under Section 409 of the Clean Air Act.

(47) **Reserved**

(48) **Secondary emissions** means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purposes of this section, secondary emissions must be specific, well defined, quantifiable, and impact the same general areas the stationary source modification which causes secondary emissions. Secondary emissions include emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, from a vessel; or from the following:

(a) Emissions from ships or trains coming to or from the new or modified stationary source; and

(b) Emissions from any offsite support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification.

(49)(a) **Significant** means, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant		**Emissions Rate (tons per year)**
Carbon monoxide		100
Nitrogen oxides		40
Sulfur dioxide		40
Particulate matter:	Particulate matter emissions	25
	PM_{10} emissions	15
	Direct $PM_{2.5}$	10
	Sulfur dioxide emissions	40
	Nitrogen oxide emissions unless demonstrated not to be a $PM_{2.5}$ precursor under paragraph (B)(44) of this section	40
Ozone:	Volatile organic compounds (VOCs)	40

Pollutant	Emissions Rate (tons per year)
Nitrogen Oxides	40
Lead	0.6
Fluorides	3
Sulfuric acid mist	7
Hydrogen sulfide (H_2S)	10
Total reduced sulfur (including H_2S)	10
Reduced sulfur compounds (including H_2S)	10
Municipal waste combustor organics (measured as total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans):	3.2×10^{-6} megagrams per year (3.5×10^{-6} tons per year)
Municipal waste combustor metals (measured as particulate matter)	14 megagrams per year (15 tons per year)
Municipal waste combustor acid gases (measured as sulfur dioxide and hydrogen chloride)	36 megagrams per year (40 tons per year)
Municipal solid waste landfills emissions (measured as nonmethane organic compounds)	45 megagrams per year (50 tons per year)

(b) **Significant** means, in reference to a net emissions increase or the potential of a source to emit a regulated NSR pollutant that paragraph (B)(49)(a), does not list, any emissions rate.

(c) Notwithstanding paragraph (B)(49)(a), significant means any emissions rate or any net emissions increase associated with a major stationary source or major modification, which would construct within ten (10) kilometers of a Class I area, and have an impact on such area equal to or greater than 1 $\mu g/m^3$, (twenty-four (24)-hour average).

(50) **Significant emissions increase** means, for a regulated NSR pollutant, an increase in emissions that is significant (as defined in paragraph (B)(49)) for that pollutant.

(51) **Stationary source** means any building, structure, facility, or installation which emits or may emit a regulated NSR pollutant.

(52) **Temporary clean coal technology demonstration project** means a clean coal technology demonstration project that is operated for a period of five (5) years or less, and which complies with the State Implementation Plans for the state in which the project is located and other requirements necessary to attain and maintain the National Ambient Air Quality Standards during the project and after it is terminated.

(53) **Volatile organic compounds (VOC)** is as defined in Regulation 61-62.1, Section (I), Definitions.

(C) Ambient air increments.

(1) In areas designated as Class I, II, or III, increases in pollutant concentration over the baseline concentration shall be limited to the following:

CLASS I		
Pollutant		Maximum Allowable Increase (micrograms per cubic meter)
$PM_{2.5}$:	annual arithmetic mean	1
	24-hr maximum	2
PM_{10}:	annual arithmetic mean	4
	24-hr maximum	8
Sulfur dioxide:	annual arithmetic mean	2
	24-hr maximum	5
	3-hr maximum	25
Nitrogen dioxide:	annual arithmetic mean	2.5

CLASS II		
Pollutant		Maximum Allowable Increase (micrograms per cubic meter)
$PM_{2.5}$:	annual arithmetic mean	4
	24-hr maximum	9
PM_{10}:	annual arithmetic mean	17
	24-hr maximum	30
Sulfur dioxide:	annual arithmetic mean	20
	24-hr maximum	91
	3-hr maximum	512
Nitrogen dioxide:	annual arithmetic mean	25

CLASS III		
Pollutant		Maximum Allowable Increase (micrograms per cubic meter)
$PM_{2.5}$:	annual arithmetic mean	8
	24-hr maximum	18
PM_{10}:	annual arithmetic mean	34
	24-hr maximum	60
Sulfur dioxide:	annual arithmetic mean	40
	24-hr maximum	182
	3-hr maximum	700
Nitrogen dioxide:	annual arithmetic mean	50

(2) For any period other than an annual period, the applicable maximum allowable increase may be exceeded during one such period per year at any one location.

(D) Ambient air ceilings. No concentration of a pollutant shall exceed:

(1) The concentration permitted under the national secondary ambient air quality standard; or

(2) The concentration permitted under the national primary ambient air quality standard, whichever concentration is lowest for the pollutant for a period of exposure.

(E) Restrictions on area classifications.

(1) All of the following areas which were in existence on August 7, 1977, shall be Class I areas and may not be redesignated:

(a) International parks;

(b) National wilderness areas which exceed 5,000 acres in size;

(c) National memorial parks which exceed 5,000 acres in size; and

(d) National parks which exceed 6,000 acres in size.

(2) Areas which were redesignated as Class I under regulations promulgated before August 7, 1977, shall remain Class I, but may be redesignated as provided in this section.

(3) Any other area, unless otherwise specified in the legislation creating such an area, is initially designated Class II, but may be redesignated as provided in this section.

(4) The following areas may be redesignated only as Class I or II:

(a) An area which as of August 7, 1977, exceeded 10,000 acres in size and was a national monument, a national primitive area, a national preserve, a national recreational area, a national wild and scenic river, a national wildlife refuge, a national lakeshore or seashore; and

(b) A national park or national wilderness area established after August 7, 1977, which exceeds 10,000 acres in size.

(F) [Reserved]

(G) Redesignation.

(1) All areas (except as otherwise provided under paragraph (E)) are designated Class II as of December 5, 1974. Redesignation (except as otherwise precluded by paragraph (E)) may be proposed by the respective states or Indian Governing Bodies, as provided below, subject to approval by the Administrator as a revision to the applicable State Implementation Plan.

(2) The state may submit to the Administrator a proposal to redesignate areas of the state Class I or Class II provided that:

(a) At least one public hearing has been held in accordance with procedures established in 40 CFR 51.102;

(b) Other states, Indian Governing Bodies, and Federal Land Managers whose lands may be affected by the proposed redesignation were notified at least thirty (30) days prior to the public hearing;

(c) A discussion of the reasons for the proposed redesignation, including a satisfactory description and analysis of the health, environmental, economic, social and energy effects of the proposed redesignation, was prepared and made available for public inspection at least 30 days prior to the hearing and the notice announcing the hearing contained appropriate notification of the availability of such discussion;

(d) Prior to the issuance of notice respecting the redesignation of an area that includes any federal lands, the state has provided written notice to the appropriate Federal Land Manager and afforded adequate opportunity (not in excess of sixty (60) days) to confer with the state respecting the redesignation and to submit written

comments and recommendations. In redesignating any area with respect to which any Federal Land Manager had submitted written comments and recommendations, the state shall have published a list of any inconsistency between such redesignation and such comments and recommendations (together with the reasons for making such redesignation against the recommendation of the Federal Land Manager); and

(e) The state has proposed the redesignation after consultation with the elected leadership of local and other substate general purpose governments in the area covered by the proposed redesignation.

(3) Any area other than an area to which paragraph (E) refers may be redesignated as Class III if:

(a) The redesignation would meet the requirements of paragraph (G)(2);

(b) The redesignation, except any established by an Indian Governing Body, has been specifically approved by the Governor of the state, after consultation with the appropriate committees of the legislature, if it is in session, or with the leadership of the legislature, if it is not in session (unless state law provides that the redesignation must be specifically approved by State legislation) and if general purpose units of local government representing a majority of the residents of the area to be redesignated enact legislation or pass resolutions concurring in the redesignation:

(c) The redesignation would not cause, or contribute to, a concentration of any air pollutant which would exceed any maximum allowable increase permitted under the classification of any other area or any National Ambient Air Quality Standard; and

(d) Any permit application for any major stationary source or major modification, subject to review under paragraph (L), which could receive a permit under this section only if the area in question were redesignated as Class III, and any material submitted as part of that application, were available insofar as was practicable for public inspection prior to any public hearing on redesignation of the area as Class III.

(4) Lands within the exterior boundaries of Indian Reservations may be redesignated only by the appropriate Indian Governing Body. The appropriate Indian Governing Body may submit to the Department a proposal to redesignate areas Class I, Class II, or Class III, provided that:

(a) The Indian Governing Body has followed procedures equivalent to those required of a state under paragraphs (G)(2), (G)(3)(c), and (G)(3)(d); and

(b) Such redesignation is proposed after consultation with the state(s) in which the Indian Reservation is located and which border the Indian Reservation.

(5) The Administrator shall disapprove, within ninety (90) days of submission, a proposed redesignation of any area only if it is found, after notice and opportunity for public hearing, that such redesignation does not meet the procedural requirements of this paragraph or is inconsistent with paragraph (E). If any such disapproval occurs, the classification of the area shall be that which was in effect prior to the redesignation which was disapproved.

(6) If the Administrator disapproves any proposed redesignation, the state or Indian Governing Body, as appropriate, may resubmit the proposal after correcting the deficiencies noted by the Administrator.

(H) Stack heights.

(1) The degree of emission limitation required for control of any air pollutant under this section shall not be affected in any manner by;

(a) So much of the stack height of any source as exceeds good engineering practice; or

(b) Any other dispersion technique.

(2) Paragraph (H)(1) shall not apply with respect to stack heights in existence before December 31, 1970, or to dispersion techniques implemented before then.

(I) Exemptions.

(1) The requirements of paragraphs (J) through (R) shall not apply to a particular major stationary source or major modification, if:

(a) Construction commenced on the source or modification before August 7, 1977. The regulations at 40 CFR 52.21 as in effect before August 7, 1977, shall govern the review and permitting of any such source or modification; or

(b) The source or modification was subject to the review requirements of 40 CFR 52.21(d)(1) as in effect before March 1, 1978, and the owner or operator:

(i) Obtained under 40 CFR 52.21 a final approval effective before March 1, 1978;

(ii) Commenced construction before March 19, 1979; and

(iii) Did not discontinue construction for a period of 18 months or more and completed construction within a reasonable time; or

(c) The source or modification was subject to 40 CFR 52.21 as in effect before March 1, 1978, and the review of an application for approval for the stationary source or modification under 40 CFR 52.21 would have been completed by March 1, 1978, but for an extension of the public comment period pursuant to a request for such an extension. In such case, the application shall continue to be processed, and granted or denied, under 40 CFR 52.21 as in effect prior to March 1, 1978; or

(d) The source or modification was not subject to 40 CFR 52.21 as in effect before March 1, 1978, and the owner or operator:

(i) Obtained all final federal, state and local preconstruction approvals or permits necessary under the applicable State Implementation Plan before March 1, 1978;

(ii) Commenced construction before March 19, 1979; and

(iii) Did not discontinue construction for a period of 18 months or more and completed construction within a reasonable time; or

(e) The source or modification was not subject to 40 CFR 52.21 as in effect on June 19, 1978 or under the partial stay of regulations published on February 5, 1980 (45 FR 7800), and the owner or operator:

(i) Obtained all final federal, state and local preconstruction approvals or permits necessary under the applicable State Implementation Plan before August 7, 1980;

(ii) Commenced construction within eighteen (18) months from August 7, 1980, or any earlier time required under the applicable State Implementation Plan; and

(iii) Did not discontinue construction for a period of eighteen (18) months or more and completed construction within a reasonable time; or

(f) The source or modification would be a nonprofit health or nonprofit educational institution, or a major modification would occur at such an institution, and the Governor of the state in which the source or modification would be located requests that it be exempt from those requirements; or

(g) The source or modification would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to any of the following categories:

(i) Coal cleaning plants (with thermal dryers);

(ii) Kraft pulp mills;

(iii) Portland cement plants;

(iv) Primary zinc smelters;

(v) Iron and steel mills;

(vi) Primary aluminum ore reduction plants;

(vii) Primary copper smelters;

(viii) Municipal incinerators capable of charging more than 250 tons of refuse per day;

(ix) Hydrofluoric, sulfuric, or nitric acid plants;

(x) Petroleum refineries;

(xi) Lime plants;

(xii) Phosphate rock processing plants;

(xiii) Coke oven batteries;

(xiv) Sulfur recovery plants;

(xv) Carbon black plants (furnace process);

(xvi) Primary lead smelters;

(xvii) Fuel conversion plants;

(xviii) Sintering plants;

(xix) Secondary metal production plants;

(xx) Chemical process plants – The term chemical processing plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140;

(xxi) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;

(xxii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(xxiii) Taconite ore processing plants;

(xxiv) Glass fiber processing plants;

(xxv) Charcoal production plants;

(xxvi) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;

(xxvii) Any other stationary source category which, as of August 7, 1980, is being regulated under Section 111 or 112 of the Clean Air Act; or

(h) The source is a portable stationary source which has previously received a permit under this section, and:

(i) The owner or operator proposes to relocate the source and emissions of the source at the new location would be temporary; and

(ii) The emissions from the source would not exceed its allowable emissions; and

(iii) The emissions from the source would impact no Class I area and no area where an applicable increment is known to be violated; and

(iv) Reasonable notice is given to the Department prior to the relocation identifying the proposed new location and the probable duration of operation at the new location. Such notice shall be given to the Department not less than ten (10) days in advance of the proposed relocation unless a different time duration is previously approved by the Department.

(i) The source or modification was not subject to 40 CFR 52.21 with respect to particulate matter, as in effect before July 31, 1987, and the owner or operator:

(i) Obtained all final Federal, State, and local preconstruction approvals or permits necessary under the applicable State implementation plan before July 31, 1987;

(ii) Commenced construction within eighteen (18) months after July 31, 1987, or any earlier time required under the State Implementation Plan; and

(iii) Did not discontinue construction for a period of 18 months or more and completed construction within a reasonable period of time.

(j) The source or modification was subject to 40 CFR 52.21, with respect to particulate matter, as in effect before July 31, 1987, and the owner or operator submitted an application for a permit under this section before that date, and the Department subsequently determines that the application as submitted was complete with respect to the particulate matter requirements then in effect in this section. Instead, the requirements of paragraphs (J) through (R) that were in effect before July 31, 1987, shall apply to such source or modification.

(2) The requirements of paragraphs (J) through (R) shall not apply to a major stationary source or major modification with respect to a particular pollutant if the owner or operator demonstrates that, as to that pollutant, the source or modification is located in an area designated as nonattainment under Section 107 of the Clean Air Act.

(3) The requirements of paragraphs (K), (M), and (O) shall not apply to a major stationary source or major modification with respect to a particular pollutant, if the allowable emissions of that pollutant from the source, or the net emissions increase of that pollutant from the modification:

(a) Would impact no Class I area and no area where an applicable increment is known to be violated; and

(b) Would be temporary.

(4) The requirements of paragraphs (K), (M), and (O) as they relate to any maximum allowable increase for a Class II area shall not apply to a major modification at a stationary source that was in existence on March 1, 1978, if the net increase in allowable emissions of each regulated NSR pollutant from the modification after the application of BACT would be less than fifty (50) tons per year.

(5) The Department may exempt a stationary source or modification from the requirements of paragraph (M), with respect to monitoring for a particular pollutant if:

(a) The emissions increase of the pollutant from the new source or the net emissions increase of the pollutant from the modification would cause, in any area, air quality impacts less than the following amounts:

Pollutant	Concentration	Averaging Period
Carbon monoxide	575 µg/m^3	8-hour average
Nitrogen dioxide	14 µg/m^3	annual average
PM_{10}	10 µg/m^3	24-hour average
Sulfur dioxide	13 µg/m^3	24-hour average
Ozone;[1]		
Lead	0.1 µg/m^3	3-month average
Fluorides	0.25 µg/m^3	24-hour average
Total reduced sulfur	10 µg/m^3	1-hour average
Hydrogen sulfide	0.2 µg/m^3	1-hour average
Reduced sulfur compounds	10 µg/m^3	1-hour average; or

[1] No de minimis air quality level is provided for ozone. However, any net emissions increase of one hundred (100) tons per year or more of VOCs or nitrogen oxides subject to PSD would be required to perform an ambient impact analysis including the gathering of ambient air quality data.

(b) The concentrations of the pollutant in the area that the source or modification would affect are less than the concentrations listed in paragraph (I)(5)(a), or the pollutant is not listed in paragraph (I)(5)(a).

(6) The requirements for BACT in paragraph (J) and the requirements for air quality analyses in paragraph (M)(1), shall not apply to a particular stationary source or modification that was subject to 40 CFR 52.21 as in effect on June 19, 1978, if the owner or operator of the source or modification submitted an application for a permit under those regulations before August 7, 1980, and the Department subsequently determines that the application as submitted before that date was complete. Instead, the requirements at 40 CFR 52.21(j) and (n) as in effect on June 19, 1978 apply to any such source or modification.

(7)(a) The requirements for air quality monitoring in paragraphs (M)(1)(b) through (M)(1)(d) shall not apply to a particular source or modification that was subject to 40 CFR 52.21 as in effect on June 19, 1978, if the owner or operator of the source or modification submits an application for a permit under this section on or before June 8, 1981, and the Department subsequently determines that the application as submitted before that

date was complete with respect to the requirements of this regulation other than those in paragraphs (M)(1)(b) through (M)(1)(d), and with respect to the requirements for such analyses at 40 CFR 52.21(m)(2) as in effect on June 19, 1978. Instead, the latter requirements shall apply to any such source or modification.

(b) The requirements for air quality monitoring in paragraphs (M)(1)(b) through (M)(1)(d) shall not apply to a particular source or modification that was not subject to 40 CFR 52.21 as in effect on June 19, 1978, if the owner or operator of the source or modification submits an application for a permit under this section on or before June 8, 1981, and the Department subsequently determines that the application as submitted before that date was complete, except with respect to the requirements in paragraphs (M)(1)(b) through (M)(1)(d).

(8)(a) At the discretion of the Department, the requirements for air quality monitoring of PM_{10} in paragraphs (M)(1)(a) through (M)(1)(d) may not apply to a particular source or modification when the owner or operator of the source or modification submits an application for a permit under this section on or before June 1, 1988 and the Department subsequently determines that the application as submitted before that date was complete, except with respect to the requirements for monitoring particulate matter in paragraphs (M)(1)(a) through (M)(1)(d).

(b) The requirements for air quality monitoring of PM_{10} in paragraphs (M)(1), (M)(1)(b), (M)(1)(d), and (M)(3) shall apply to a particular source or modification if the owner or operator of the source or modification submits an application for a permit under this section after June 1, 1988 and no later than December 1, 1988. The data shall have been gathered over at least the period from February 1, 1988 to the date the application becomes otherwise complete in accordance with the provisions set forth under paragraph (M)(1)(h), except that if the Department determines that a complete and adequate analysis can be accomplished with monitoring data over a shorter period (not to be less than four (4) months), the data that paragraph (M)(1)(c) requires shall have been gathered over a shorter period.

(9) The requirements of paragraph (K)(2) shall not apply to a stationary source or modification with respect to any maximum allowable increase for nitrogen oxides if the owner or operator of the source or modification submitted an application for a permit under this section before the provisions embodying the maximum allowable increase took effect as part of the applicable implementation plan and the Department subsequently determined that the application as submitted before that date was complete.

(10) The requirements in paragraph (K)(2) shall not apply to a stationary source or modification with respect to any maximum allowable increase for PM_{10} if:

(a) The owner or operator of the source or modification submitted an application for a permit under this section before the provisions embodying the maximum allowable increases for PM_{10} took effect in an implementation plan to which this section applies; and

(b) The Department subsequently determined that the application as submitted before that date was otherwise complete. Instead, the requirements in paragraph (K)(2) shall apply with respect to the maximum allowable increases for TSP as in effect on the date the application was submitted.

(11) The requirements of Section (K) shall not apply to a permit application for a stationary source or modification with respect to the revised national ambient air quality standards for ozone published on October 26, 2015, if:

(a) The Department has determined the permit application subject to this section to be complete on or before October 1, 2015. Instead, the requirements in Section (K) shall apply with respect to the national ambient air quality standards for ozone in effect at the time the Department determined the permit application to be complete; or

(b) The Department has first published before December 28, 2015, a public notice of a preliminary determination or draft permit for the permit application subject to this section. Instead, the requirements in

Section (K) shall apply with respect to the national ambient air quality standards for ozone in effect on the date the Department first published a public notice of a preliminary determination or draft permit.

(J) Control technology review.

(1) A major stationary source or major modification shall meet each applicable emissions limitation under the State Implementation Plan and each applicable emissions standard and standard of performance under 40 CFR Parts 60 and 61.

(2) A new major stationary source shall apply BACT for each regulated NSR pollutant that it would have the potential to emit in significant amounts.

(3) A major modification shall apply BACT for each regulated NSR pollutant for which it would result in a significant net emissions increase at the source. This requirement applies to each proposed emissions unit at which a net emissions increase in the pollutant would occur as a result of a physical change or change in the method of operation in the unit.

(4) For phased construction projects, the determination of BACT shall be reviewed and modified as appropriate at the latest reasonable time which occurs no later than eighteen (18) months prior to commencement of construction of each independent phase of the project. At such time, the owner or operator of the applicable stationary source may be required to demonstrate the adequacy of any previous determination of BACT for the source.

(K) Source impact analysis.

The owner or operator of the proposed source or modification shall demonstrate that allowable emission increases from the proposed source or modification, in conjunction with all other applicable emissions increases or reductions (including secondary emissions), would not cause or contribute to air pollution in violation of:

(1) Any National Ambient Air Quality Standard in any air quality control region; or

(2) Any applicable maximum allowable increase over the baseline concentration in any area.

(L) Air quality models.

(1) All estimates of ambient concentrations required under this paragraph shall be based on applicable air quality models, data bases, and other requirements specified in 40 CFR Part 51 Appendix W (Guideline on Air Quality Models).

(2) Where an air quality model specified in 40 CFR Part 51 Appendix W (Guideline on Air Quality Models) is inappropriate, the model may be modified or another model substituted. Such a modification or substitution of a model may be made on a case-by-case basis or, where appropriate, on a generic basis for a specific state program. Written approval of the Department must be obtained for any modification or substitution. In addition, use of a modified or substituted model must be subject to notice and opportunity for public comment under procedures developed in accordance with paragraph (Q).

(M) Air quality analysis.

(1) Preapplication analysis.

(a) Any application for a permit under this section shall contain an analysis of ambient air quality in the area that the major stationary source or major modification would affect for each of the following pollutants:

(i) For the source, each pollutant that it would have the potential to emit in a significant amount;

(ii) For the modification, each pollutant for which it would result in a significant net emissions increase.

(b) With respect to any such pollutant for which no National Ambient Air Quality Standard exists, the analysis shall contain such air quality monitoring data as the Department determines is necessary to assess ambient air quality for that pollutant in any area that the emissions of that pollutant would affect.

(c) With respect to any such pollutant (other than nonmethane hydrocarbons) for which such a standard does exist, the analysis shall contain continuous air quality monitoring data gathered for purposes of determining whether emissions of that pollutant would cause or contribute to a violation of the standard or any maximum allowable increase.

(d) In general, the continuous air quality monitoring data that is required shall have been gathered over a period of at least one year and shall represent at least the year preceding receipt of the application, except that, if the Department determines that a complete and adequate analysis can be accomplished with monitoring data gathered over a period shorter than one (1) year (but not to be less than four (4) months), the data that is required shall have been gathered over at least that shorter period.

(e) For any application which becomes complete, except as to the requirements of paragraphs (M)(1)(c) and (M)(1)(d), between June 8, 1981, and February 9, 1982, the data that paragraph (M)(1)(c), requires shall have been gathered over at least the period from February 9, 1981, to the date the application becomes otherwise complete, except that:

(i) If the source or modification would have been major for that pollutant under 40 CFR 52.21 as in effect on June 19, 1978, any monitoring data shall have been gathered over at least the period required by those regulations.

(ii) If the Department determines that a complete and adequate analysis can be accomplished with monitoring data over a shorter period (not to be less than four (4) months), the data that paragraph (M)(1)(c), requires shall have been gathered over at least that shorter period.

(iii) If the monitoring data would relate exclusively to ozone and would not have been required under 40 CFR 52.21 as in effect on June 19, 1978, the Department may waive the otherwise applicable requirements of this paragraph (M)(1)(e) to the extent that the applicant shows that the monitoring data would be unrepresentative of air quality over a full year.

(f) The owner or operator of a proposed stationary source or modification of VOCs who satisfies all conditions of 40 CFR Part 51 Appendix S, Section IV may provide post-approval monitoring data for ozone in lieu of providing preconstruction data as required under paragraph (M)(1).

(g) For any application that becomes complete, except as to the requirements of paragraphs (M)(1)(c) and (M)(1)(d) pertaining to PM_{10}, after December 1, 1988, and no later than August 1, 1989, the data that paragraph (M)(1)(c) requires shall have been gathered over at least the period from August 1, 1988, to the date the application becomes otherwise complete, except that if the Department determines that a complete and adequate analysis can be accomplished with monitoring data over a shorter period (not to be less than four (4) months), the data that paragraph (M)(1)(c) requires shall have been gathered over that shorter period.

(h) With respect to any requirements for air quality monitoring of PM_{10} under paragraphs (I)(11)(a) and (I)(11)(b), the owner or operator of the source or modification shall use a monitoring method approved by the Department and shall estimate the ambient concentrations of PM_{10} using the data collected by such approved monitoring method in accordance with estimating procedures approved by the Department.

(2) Post-construction monitoring. The owner or operator of a major stationary source or major modification shall, after construction of the stationary source or modification, conduct such ambient monitoring as the Department determines is necessary to determine the effect emissions from the stationary source or modification may have, or are having, on air quality in any area.

(3) Operations of monitoring stations. The owner or operator of a major stationary source or major modification shall meet the requirements of Appendix B to 40 CFR Part 58 of during the operation of monitoring stations for purposes of satisfying paragraph (M).

(N) Source information.

The owner or operator of a proposed source or modification shall submit all information necessary to perform any analysis or make any determination required under this section.

(1) With respect to a source or modification to which paragraphs (J), (L), (N), and (P) apply, such information shall include:

(a) A description of the nature, location, design capacity, and typical operating schedule of the source or modification, including specifications and drawings showing its design and plant layout;

(b) A detailed schedule for construction of the source or modification;

(c) A detailed description as to what system of continuous emission reduction is planned for the source or modification, emission estimates, and any other information necessary to determine that BACT would be applied.

(2) Upon request of the Department, the owner or operator shall also provide information on:

(a) The air quality impact of the source or modification, including meteorological and topographical data necessary to estimate such impact; and

(b) The air quality impacts, and the nature and extent of any or all general commercial, residential, industrial, and other growth which has occurred since August 7, 1977, in the area the source or modification would affect.

(O) Additional impact analyses.

(1) The owner or operator shall provide an analysis of the impairment to visibility, soils and vegetation that would occur as a result of the source or modification and general commercial, residential, industrial and other growth associated with the source or modification. The owner or operator need not provide an analysis of the impact on vegetation having no significant commercial or recreational value.

(2) The owner or operator shall provide an analysis of the air quality impact projected for the area as a result of general commercial, residential, industrial and other growth associated with the source or modification.

(3) Visibility monitoring. The Department may require monitoring of visibility in any Class I area near the proposed new stationary source for major modification for such purposes and by such means as the Administrator deems necessary and appropriate.

(P) Sources impacting Federal Class I areas - additional requirements.

(1) Notice to Federal Land Managers. The Department shall provide written notice of any permit application for a proposed major stationary source or major modification, the emissions from which may affect a Class I

area, to the Federal Land Manager and the federal official charged with direct responsibility for management of any lands within any such area. Such notification shall include a copy of all information relevant to the permit application and shall be given within thirty (30) days of receipt and at least sixty (60) days prior to any public hearing on the application for a permit to construct. Such notification shall include an analysis of the proposed source's anticipated impacts on visibility in the Class I area. The Department shall also provide the Federal Land Manager and such federal officials with a copy of the preliminary determination required under paragraph (Q), and shall make available to them any materials used in making that determination, promptly after the Department makes such determination. Finally, the Department shall also notify all affected Federal Land Managers within thirty (30) days of receipt of any advance notification of any such permit application.

(2) Federal Land Manager. The Federal Land Manager and the federal official charged with direct responsibility for management of such lands have an affirmative responsibility to protect the air quality related values (including visibility) of such lands and to consider, in consultation with the Department, whether a proposed source or modification will have an adverse impact on such values.

(3) Visibility analysis. The Department shall consider any analysis performed by the Federal Land Manager, provided within thirty (30) days of the notification required by paragraph (P)(1), that shows that a proposed new major stationary source or major modification may have an adverse impact on visibility in any Class I area. Where the Department finds that such an analysis does not demonstrate to the satisfaction of the Department that an adverse impact on visibility will result in the Federal Class I area, the Department must, in the notice of public hearing on the permit application, either explain its decision or give notice as to where the explanation can be obtained.

(4) Denial– impact on air quality related values. The Federal Land Manager of any such lands may demonstrate to the Department that the emissions from a proposed source or modification would have an adverse impact on the air quality-related values (including visibility) of those lands, notwithstanding that the change in air quality resulting from emissions from such source or modification would not cause or contribute to concentrations which would exceed the maximum allowable increases for a Class I area. If the Department concurs with such demonstration, then the permit shall not be issued.

(5) Class I variances. The owner or operator of a proposed source or modification may demonstrate to the Federal Land Manager that the emissions from such source or modification would have no adverse impact on the air quality related values of any such lands (including visibility), notwithstanding that the change in air quality resulting from emissions from such source or modification would cause or contribute to concentrations which would exceed the maximum allowable increases for a Class I area. If the Federal Land Manager concurs with such demonstration and so certifies, the state may authorize the Administrator, provided that the applicable requirements of this regulation are otherwise met, to issue the permit with such emission limitations as may be necessary to assure that emissions of sulfur dioxide, $PM_{2.5}$, PM_{10}, and nitrogen oxides would not exceed the following maximum allowable increases over minor source baseline concentration for such pollutants:

Pollutant		Maximum Allowable Increase (micrograms per cubic meter)
$PM_{2.5}$:	annual arithmetic mean	4
	24-hr maximum	9
PM_{10}:	annual arithmetic mean	17
	24-hr maximum	30
Sulfur dioxide:	annual arithmetic mean	20
	24-hr maximum	91
	3-hr maximum	325
Nitrogen dioxide:	annual arithmetic mean	25

(6) Sulfur dioxide variance by Governor with Federal Land Manager's concurrence. The owner or operator of a proposed source or modification which cannot be approved under paragraph (Q)(4) may demonstrate to the Governor that the source cannot be constructed by reason of any maximum allowable increase for sulfur dioxide for a period of twenty-four (24) hours or less applicable to any Class I area and, in the case of Federal mandatory Class I areas, that a variance under this clause would not adversely affect the air quality related values of the area (including visibility). The Governor, after consideration of the Federal Land Manager's recommendation (if any) and concurrence, may, after notice and public hearing, grant a variance from such maximum allowable increase. If such variance is granted, the Department shall issue a permit to such source or modification pursuant to the requirements of paragraph (Q)(7), provided that the applicable requirements of this regulation are otherwise met.

(7) Variance by the Governor with the President's concurrence. In any case where the Governor recommends a variance in which the Federal Land Manager does not concur, the recommendations of the Governor and the Federal Land Manager shall be transmitted to the President. The President may approve the Governor's recommendation if it is found that the variance is in the national interest. If the variance is approved, the Department shall issue a permit pursuant to the requirements of paragraph (Q)(7), provided that the applicable requirements of this regulation are otherwise met.

(8) Emission limitations for Presidential or gubernatorial variance. In the case of a permit issued pursuant to paragraph (Q)(5) or (Q)(6) the source or modification shall comply with such emission limitations as may be necessary to assure that emissions of sulfur dioxide from the source or modification would not (during any day on which the otherwise applicable maximum allowable increases are exceeded) cause or contribute to concentrations which would exceed the following maximum allowable increases over the baseline concentration and to assure that such emissions would not cause or contribute to concentrations which exceed the otherwise applicable maximum allowable increases for periods of exposure of twenty-four (24) hours or less for more than eighteen (18) days, not necessarily consecutive, during any annual period:

MAXIMUM ALLOWABLE INCREASE (Micrograms per cubic meter)		
Period of exposure	Terrain Areas	
	Low	High
24-hr maximum	36	62
3-hr maximum	130	221

(Q) Public participation.

(1) Within thirty (30) days after receipt of an application to construct, or any addition to such application, the Department shall advise the applicant of any deficiency in the application or in the information submitted and transmit a copy of such application to EPA. In the event of such a deficiency, the date of receipt of the application shall be, for the purpose of this regulation, the date on which the Department received all required information.

(2) In accordance with Regulation 61-30, Environmental Protection Fees, the Department shall make a final determination on the application. This involves performing the following actions in a timely manner:

(a) Make a preliminary determination whether construction should be approved, approved with conditions, or disapproved.

(b) Make available in at least one location in each region in which the proposed source or modification would be constructed a copy of all materials the applicant submitted, a copy of the preliminary determination and a copy or summary of other materials, if any, considered in making the preliminary determination. This requirement may be met by making these materials available at a physical location or on a public website identified by the Department.

(c) Notify the public, by posting the notice, for the duration of the public comment period, on a public website identified by the Department. This consistent noticing method shall be used for all draft permits subject to notice under this section. The public website notice shall include a notice of public comment including notice of the application, the preliminary determination, the degree of increment consumption that is expected from the source or modification, and the opportunity for comment at a public hearing as well as written public comment. The public website notice shall also include the draft permit, information on how to access the administrative record for the draft permit and how to request and/or attend a public hearing on the draft permit. The Department may use additional means to provide adequate notice to the affected public, including by publishing the notice in a newspaper of general circulation in each region in which the proposed source or modification would be constructed (or in a state publication designed to give general public notice).

(d) Send a copy of the notice of public comment to the applicant, the Administrator of EPA, and to officials and agencies having cognizance over the location where the proposed construction would occur as follows: The chief executives of the city and county where the source or modification would be located, any comprehensive regional land use planning agency and any state, Federal Land Manager, or Indian Governing Body whose lands may be affected by emissions from the source or modification.

(e) Provide opportunity for a public hearing for interested persons to appear and submit written or oral comments on the air quality impact of the source or modification, alternatives to the source or modification, the control technology required, and other appropriate considerations.

(f) Consider all written comments submitted within a time specified in the notice of public comment and all comments received at any public hearing in making a final decision on the approvability of the application. No later than ten (10) days after the close of the public comment period, the applicant may submit a written response to any comments submitted by the public. The Department shall consider the applicant's response in making a final decision. The Department shall make all comments available for public inspection in the same location or on the same website where the Department made available preconstruction information relating to the proposed source or modification.

(g) Make a final determination whether construction should be approved, approved with conditions, or disapproved pursuant to this section.

(h) Notify the applicant in writing of the final determination and make such notification available for public inspection at the same location or on the same website where the Department made available preconstruction information and public comments relating to the source or modification.

(i) Notify EPA of every action related to the consideration of the permit.

(3) The requirements of Section (Q), Public Participation, of this standard shall not apply to any major plant or major modification which Section (I), Exemptions, would exempt from the requirements of Sections (K), (M), and (O), but only to the extent that, with respect to each of the criteria for construction approval under the South Carolina State Implementation Plan and for exemption under Section (I), requirements providing the public with at least as much participation in each material determination as those of Section (Q) have been met in the granting of such construction approval.

(R) Source obligation.

In addition to all other applicable requirements specified in this regulation, the owner or operator shall comply with the requirements of paragraphs (R)(1) through (R)(8).

(1) Any owner or operator who constructs or operates a source or modification not in accordance with the application submitted pursuant to this section or with the terms of any approval to construct, or any owner or operator of a source or modification subject to this section who commences construction after the effective date

of these regulations without applying for and receiving approval hereunder, shall be subject to appropriate enforcement action.

(2) Approval to construct shall become invalid if construction is not commenced within eighteen (18) months after receipt of such approval, if construction is discontinued for a period of eighteen (18) months or more, or if construction is not completed within a reasonable time. The Department may extend the eighteen (18)-month period upon a satisfactory showing that an extension is justified. This provision does not apply to the time period between construction of the approved phases of a phased construction project; each phase must commence construction within eighteen (18) months of the projected and approved commencement date.

(3) Approval to construct shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the State Implementation Plan and any other requirements under local, state, or federal law.

(4) At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements or paragraphs (J) through (R) shall apply to the source or modification as though construction had not yet commenced on the source or modification.

(5) Reserved

(6) **Monitoring, recordkeeping and reporting.** The provisions of this paragraph (R)(6) apply with respect to any regulated NSR pollutant emitted from projects at an existing emissions unit at a major stationary source (other than projects at a source with a PAL) in circumstances where there is a reasonable possibility that a project that is not a part of a major modification may result in a significant emissions increase and the owner or operator elects to use the method specified in paragraphs (B)(41)(b)(i) through (B)(41)(b)(iii) for calculating projected actual emissions.

(a) If the project requires construction permitting under Regulation 61-62.1, Section II, "Permit Requirements," the owner or operator shall provide a copy of the information set out in paragraph (R)(6)(b) as part of the permit application to the Department. If construction permitting under Regulation 61-62.1, Section II, "Permit Requirements," is not required, the owner or operator shall maintain the information set out in paragraph (R)(6)(b).

(b) Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information:

(i) A description of the project;

(ii) Identification of the emissions unit(s) whose emissions of a regulated NSR pollutant could be affected by the project; and

(iii) A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under paragraph (B)(41)(b)(iii) and an explanation for why such amount was excluded, and any netting calculations, if applicable.

(c) If the emissions unit is an existing electric utility steam generating unit, before beginning actual construction, the owner or operator shall provide a copy of the information set out in paragraph (R)(6)(b) of this section to the Department. Nothing in this paragraph shall be construed to require the owner or operator of such a unit to obtain any determination from the Department before beginning actual construction.

(d) The owner or operator shall monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions unit identified in paragraph (R)(6)(b)(ii); and calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of five (5) years following resumption of regular operations after the change, or for a period of ten (10) years following resumption of regular operations after the change if the project increases the design capacity of or potential to emit that regulated NSR pollutant at such emissions unit.

(e) If the unit is an existing electric utility steam generating unit, the owner or operator shall submit a report to the Department within sixty (60) days after the end of each year during which records must be generated under paragraph (R)(6)(d) setting out the unit's annual emissions during the calendar year that preceded submission of the report.

(f) If the unit is an existing unit other than an electric utility steam generating unit, the owner or operator shall submit a report to the Department if the annual emissions, in tons per year, from the project identified in paragraph (R)(6)(b), exceed the baseline actual emissions (as documented and maintained pursuant to paragraph (R)(6)(b)(iii)), by a significant amount (as defined in paragraph (B)(49)) for that regulated NSR pollutant, and if such emissions differ from the preconstruction projection as documented and maintained pursuant to paragraph (R)(6)(b)(iii). Such report shall be submitted to the Department within sixty (60) days after the end of such year. The report shall contain the following:

(i) The name, address and telephone number of the major stationary source;

(ii) The annual emissions as calculated pursuant to paragraph (R)(6)(d); and

(iii) Any other information needed to make a compliance determination (for example, an explanation as to why the emissions differ from the preconstruction projection).

(g) A "reasonable possibility" under paragraph (R)(6) of this section occurs when the owner or operator calculates the project to result in either:

(i) A projected actual emissions increase of at least fifty (50) percent of the amount that is a "significant emissions increase," as defined under paragraph (B)(50) of this section (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant; or

(ii) A projected actual emissions increase that, added to the amount of emissions excluded under paragraph (B)(41)(b)(iii) of this section, sums to at least fifty (50) percent of the amount that is a "significant emissions increase," as defined under paragraph (B)(50) of this section (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant. For a project for which a reasonable possibility occurs only within the meaning of paragraph (R)(6)(g)(ii) of this section, and not also within the meaning of paragraph (R)(6)(g)(i) of this section, then provisions (R)(6)(c) through (R)(6)(f) do not apply to the project.

(7) If a project at a source with a PAL requires construction permitting under Regulation 61-62.1, Section II, "Permit Requirements", the owner or operator shall provide notification of source status as part of the permit application to the Department.

(8) The owner or operator of the source shall make the information required to be documented and maintained pursuant to paragraph (R)(6) available for review upon a request for inspection by the Department or the general public pursuant to the requirements contained in 40 CFR 70.4(b)(3)(viii).

(S) through (U)(3) [Reserved]

(U)(4) In the case of a source or modification which proposes to construct in a Class III area, emissions from which would cause or contribute to air quality exceeding the maximum allowable increase applicable if the area were designated a Class II area, and where no standard under Section 111 of the Clean Air Act has been promulgated for such source category, the Administrator must approve the determination of BACT as set forth in the permit.

(V) Innovative control technology.

(1) An owner or operator of a proposed major stationary source or major modification may request the Department in writing no later than the close of the comment period under 40 CFR 124.10 to approve a system of innovative control technology.

(2) The Department shall, with the consent of the governor(s) of the affected state(s), determine that the source or modification may employ a system of innovative control technology, if:

(a) The proposed control system would not cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation or function;

(b) The owner or operator agrees to achieve a level of continuous emissions reduction equivalent to that which would have been required under paragraph (J)(2), by a date specified by the Department. Such date shall not be later than four (4) years from the time of startup or seven (7) years from permit issuance;

(c) The source or modification would meet the requirements of paragraphs (J) and (K), based on the emissions rate that the stationary source employing the system of innovative control technology would be required to meet on the date specified by the Department;

(d) The source or modification would not before the date specified by the Department:

(i) Cause or contribute to a violation of an applicable National Ambient Air Quality Standard; or

(ii) Impact any area where an applicable increment is known to be violated; and

(e) All other applicable requirements including those for public participation have been met.

(f) The provisions of paragraph (P) (relating to Class I areas) have been satisfied with respect to all periods during the life of the source or modification.

(3) The Department shall withdraw any approval to employ a system of innovative control technology made under this section, if:

(a) The proposed system fails by the specified date to achieve the required continuous emissions reduction rate; or

(b) The proposed system fails before the specified date so as to contribute to an unreasonable risk to public health, welfare, or safety; or

(c) The Department decides at any time that the proposed system is unlikely to achieve the required level of control or to protect the public health, welfare, or safety.

(4) If a source or modification fails to meet the required level of continuous emission reduction within the specified time period or the approval is withdrawn in accordance with paragraph (V)(3), the Department may allow the source or modification up to an additional three (3) years to meet the requirement for the application of best available control technology through use of a demonstrated system of control.

(W) Permit rescission.

(1) Any permit issued under this section or a prior version of this regulation shall remain in effect, unless and until it expires or is rescinded under this paragraph (W).

(2) Any owner or operator of a stationary source or modification who holds a permit issued under this section for the construction of a new source or modification that meets the requirement in paragraph (W)(3) of this section may request that the Department rescind the permit or a particular portion of the permit.

(3) The Department may grant an application for rescission if the application shows that this section would not apply to the source or modification.

(4) If the Department rescinds a permit under this paragraph, the Department shall post a notice of the rescission determination on a public website identified by the Department within sixty (60) days of the rescission.

(X) [Reserved]

(Y) [Reserved]

(Z) [Reserved]

(AA) Actuals PALs. The provisions in paragraphs (AA)(1) through (AA)(15) govern actuals PALs.

(1) **Applicability.**

(a) The Department may approve the use of an actuals PAL for any existing major stationary source if the PAL meets the requirements in paragraphs (AA)(1) through (AA)(15). The term "PAL" shall mean "actuals PAL" throughout Section (AA).

(b) Any physical change in or change in the method of operation of a major stationary source that maintains its total source-wide emissions below the PAL level, meets the requirements in paragraphs (AA)(1) through (AA)(15), and complies with the PAL permit:

(i) Is not a major modification for the PAL pollutant;

(ii) Does not have to be approved through Regulation 61-62.5, Standard 7, Prevention of Significant Deterioration. However, the change will be reviewed through Regulation 61-62.1, Section II, Permit Requirements; and

(iii) Is not subject to the provisions in paragraph (R)(4) (restrictions on relaxing enforceable emission limitations that the major stationary source used to avoid applicability of the major NSR program).

(c) Except as provided under paragraph (AA)(1)(b)(iii), a major stationary source shall continue to comply with all applicable federal or state requirements, emission limitations, and work practice requirements that were established prior to the effective date of the PAL.

(2) **Definitions.** The definitions in paragraphs (AA)(2)(a) through (AA)(2)(k) shall apply to actual PALs consistent with paragraphs (AA)(1) through (AA)(15). When a term is not defined in these paragraphs, it shall have the meaning given in paragraph (B) or in the Clean Air Act.

(a) **Actuals PAL** for a major stationary source means a PAL based on the baseline actual emissions (as defined in paragraph (B)(4)) of all emissions units (as defined in paragraph (B)(20)) at the source, that emit or have the potential to emit the PAL pollutant.

(b) **Allowable emissions** means "allowable emissions" as defined in paragraph (B)(3), except as this definition is modified according to paragraphs (AA)(2)(b)(i) and (AA)(2)(b)(ii).

(i) The allowable emissions for any emissions unit shall be calculated considering any emission limitations that are enforceable as a practical matter on the emissions unit's potential to emit.

(ii) An emissions unit's potential to emit shall be determined using the definition in paragraph (B)(37), except that the words "or enforceable as a practical matter" should be added after "federally enforceable."

(c) **Small emissions unit** means an emissions unit that emits or has the potential to emit the PAL pollutant in an amount less than the significant level for that PAL pollutant, as defined in paragraph (B)(49) or in the Clean Air Act, whichever is lower.

(d) **Major emissions unit** means:

(i) Any emissions unit that emits or has the potential to emit one hundred (100) tons per year or more of the PAL pollutant in an attainment area; or

(ii) Any emissions unit that emits or has the potential to emit the PAL pollutant in an amount that is equal to or greater than the major source threshold for the PAL pollutant as defined by the Clean Air Act for nonattainment areas. For example, in accordance with the definition of major stationary source in Section 182(c) of the Clean Air Act, an emissions unit would be a major emissions unit for VOC if the emissions unit is located in a serious ozone nonattainment area and it emits or has the potential to emit fifty (50) or more tons of VOC per year.

(e) **Plantwide applicability limitation (PAL)** means an emission limitation expressed in tons per year, for a pollutant at a major stationary source, that is enforceable as a practical matter and established source-wide in accordance with paragraphs (AA)(1) through (AA)(15).

(f) **PAL effective date** generally means the date of issuance of the PAL permit. However, the PAL effective date for an increased PAL is the date any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

(g) **PAL effective period** means the period beginning with the PAL effective date and ending ten (10) years later.

(h) **PAL major modification** means, notwithstanding paragraphs (B)(30) and (B)(34) (the definitions for major modification and net emissions increase), any physical change in or change in the method of operation of the PAL source that causes it to emit the PAL pollutant at a level equal to or greater than the PAL.

(i) **PAL permit** means the major NSR permit, the minor NSR permit, or the state operating permit under Regulation 61-62.1, Section II(G), or the Title V permit issued by the Department that establishes a PAL for a major stationary source.

(j) **PAL pollutant** means the pollutant for which a PAL is established at a major stationary source.

(k) **Significant emissions unit** means an emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is equal to or greater than the significant level (as defined in paragraph (B)(49) or in

the Clean Air Act, whichever is lower) for that PAL pollutant, but less than the amount that would qualify the unit as a major emissions unit as defined in paragraph (AA)(2)(d).

(3) **Permit application requirements.** As part of a permit application requesting a PAL, the owner or operator of a major stationary source shall submit the following information to the Department for approval:

(a) A list of all emissions units at the source designated as small, significant or major based on their potential to emit. In addition, the owner or operator of the source shall indicate which, if any, federal or state applicable requirements, emission limitations, or work practices apply to each unit.

(b) Calculations of the baseline actual emissions (with supporting documentation). Baseline actual emissions are to include emissions associated not only with operation of the unit, but also emissions associated with startup, shutdown, and malfunction.

(c) The calculation procedures that the major stationary source owner or operator proposes to use to convert the monitoring system data to monthly emissions and annual emissions based on a twelve (12)-month rolling total for each month as required by paragraph (AA)(13)(a).

(4) **General requirements for establishing PALs.**

(a) The Department is allowed to establish a PAL at a major stationary source, provided that at a minimum, the requirements in paragraphs (AA)(4)(a)(i) through (AA)(4)(a)(vii) are met.

(i) The PAL shall impose an annual emission limitation in tons per year, that is enforceable as a practical matter, for the entire major stationary source. For each month during the PAL effective period after the first twelve (12) months of establishing a PAL, the major stationary source owner or operator shall show that the sum of the monthly emissions from each emissions unit under the PAL for the previous twelve (12) consecutive months is less than the PAL (a twelve (12)-month average, rolled monthly). For each month during the first eleven (11) months from the PAL effective date, the major stationary source owner or operator shall show that the sum of the preceding monthly emissions from the PAL effective date for each emissions unit under the PAL is less than the PAL.

(ii) The PAL shall be established in a PAL permit that meets the public participation requirements in paragraph (AA)(5).

(iii) The PAL permit shall contain all the requirements of paragraph (AA)(7).

(iv) The PAL shall include fugitive emissions, to the extent quantifiable, from all emissions units that emit or have the potential to emit the PAL pollutant at the major stationary source.

(v) Each PAL shall regulate emissions of only one pollutant.

(vi) Each PAL shall have a PAL effective period of ten (10) years.

(vii) The owner or operator of the major stationary source with a PAL shall comply with the monitoring, recordkeeping, and reporting requirements provided in paragraphs (AA)(12) through (AA)(14) for each emissions unit under the PAL through the PAL effective period.

(b) At no time (during or after the PAL effective period) are emissions reductions of a PAL pollutant that occur during the PAL effective period creditable as decreases for purposes of offsets under 40 CFR 51.165(a)(3)(ii) unless the level of the PAL is reduced by the amount of such emissions reductions and such reductions would be creditable in the absence of the PAL.

(5) **Public participation requirements for PALs.** PALs for existing major stationary sources shall be established, renewed, or increased through a procedure that is consistent with Section (Q) "Public Participation" of this regulation. This includes the requirement that the Department provide the public with notice of the proposed approval of a PAL permit and at least a thirty (30)-day period for submittal of public comment. The Department must address all material comments before taking final action on the permit.

(6) **Setting the 10-year actuals PAL level.**

(a) Except as provided in paragraph (AA)(6)(b), the actuals PAL level for a major stationary source shall be established as the sum of the baseline actual emissions (as defined in paragraph (B)(4)) of the PAL pollutant for each emissions unit at the source; plus an amount equal to the applicable significant level for the PAL pollutant under paragraph (B)(49) or under the Clean Air Act, whichever is lower. When establishing the actuals PAL level, for a PAL pollutant, only one consecutive twenty-four (24)-month period must be used to determine the baseline actual emissions for all existing emissions units. However, a different consecutive twenty-four (24)-month period may be used for each different PAL pollutant. Emissions associated with units that were permanently shut down after this twenty-four (24)-month period must be subtracted from the PAL level. The Department shall specify a reduced PAL level(s) (in tons per year) in the PAL permit to become effective on the future compliance date(s) of any applicable federal or state regulatory requirement(s) that the Department is aware of prior to the issuance of the PAL permit. For instance, if the source owner or operator will be required to reduce emissions from industrial boilers in half from baseline emissions of sixty (60) parts per million (ppm) NO_X to a new rule limit of thirty (30) ppm, then the permit shall contain a future effective PAL level that is equal to the current PAL level reduced by half of the original baseline emissions of such unit(s).

(b) For newly constructed units (which do not include modification to existing units) on which actual construction began after the twenty-four (24)-month period, the emissions must be added to the PAL level in an amount equal to the potential to emit of the units.

(7) **Contents of the PAL permit.** The PAL permit must contain, at a minimum, the information in paragraphs (AA)(7)(a) through (AA)(7)(j).

(a) The PAL pollutant and the applicable source-wide emission limitation in tons per year.

(b) The PAL permit effective date and the expiration date of the PAL (PAL effective period).

(c) Specification in the PAL permit that if a major stationary source owner or operator applies to renew a PAL in accordance with paragraph (AA)(10) before the end of the PAL effective period, then the PAL shall not expire at the end of the PAL effective period. It shall remain in effect until a revised PAL permit is issued by the Department.

(d) A requirement that emission calculations for compliance purposes must include emissions from startups, shutdowns, and malfunctions.

(e) A requirement that, once the PAL expires, the major stationary source is subject to the requirements of paragraph (AA)(9).

(f) The calculation procedures that the major stationary source owner or operator shall use to convert the monitoring system data to monthly emissions and annual emissions based on a twelve (12)-month rolling total as required by paragraph (AA)(13)(a).

(g) A requirement that the major stationary source owner or operator monitor all emissions units in accordance with the provisions under paragraph (AA)(12).

(h) A requirement to retain the records required under paragraph (AA)(13) on site. Such records may be retained in an electronic format.

(i) A requirement to submit the reports required under paragraph (AA)(14) by the required deadlines.

(j) Any other requirements that the Department deems necessary to implement and enforce the PAL.

(8) **PAL effective period and reopening of the PAL permit.** The requirements in paragraphs (AA)(8)(a) and (AA)(8)(b) apply to actuals PALs.

(a) **PAL effective period.** The Department shall specify a PAL effective period of ten (10) years.

(b) **Reopening of the PAL permit.**

(i) During the PAL effective period, the Department must reopen the PAL permit to:

(1) Correct typographical/calculation errors made in setting the PAL or reflect a more accurate determination of emissions used to establish the PAL;

(2) Reduce the PAL if the owner or operator of the major stationary source creates creditable emissions reductions for use as offsets under 40 CFR 51.165(a)(3)(ii); and

(3) Revise the PAL to reflect an increase in the PAL as provided under paragraph (AA)(11).

(ii) The Department shall have discretion to reopen the PAL permit for the following:

(1) Reduce the PAL to reflect newly applicable federal requirements (for example, NSPS) with compliance dates after the PAL effective date;

(2) Reduce the PAL consistent with any other requirement, that is enforceable as a practical matter, and that the state may impose on the major stationary source under the State Implementation Plan; and

(3) Reduce the PAL if the Department determines that a reduction is necessary to avoid causing or contributing to a National Ambient Air Quality Standard or PSD increment violation, or to an adverse impact on an air quality related value that has been identified for a Class I area by a Federal Land Manager and for which information is available to the general public.

(iii) Except for the permit reopening in paragraph (AA)(8)(b)(i)(1) for the correction of typographical/calculation errors that do not increase the PAL level, all other reopenings shall be carried out in accordance with the public participation requirements of paragraph (AA)(5).

(9) **Expiration of a PAL.** Any PAL that is not renewed in accordance with the procedures in paragraph (AA)(10) shall expire at the end of the PAL effective period, and the requirements in paragraphs (AA)(9)(a) through (AA)(9)(e) shall apply.

(a) Each emissions unit (or each group of emissions units) that existed under the PAL shall comply with an allowable emission limitation under a revised permit established according to the procedures in paragraphs (AA)(9)(a)(i) and (AA)(9)(a)(ii).

(i) Within the time frame specified for PAL renewals in paragraph (AA)(10)(b), the major stationary source shall submit a proposed allowable emission limitation for each emissions unit (or each group of emissions units, if such a distribution is more appropriate as decided by the Department) by distributing the PAL allowable emissions for the major stationary source among each of the emissions units that existed under the PAL. If the

PAL had not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as required under paragraph (AA)(10)(e), such distribution shall be made as if the PAL had been adjusted.

(ii) The Department shall decide whether and how the PAL allowable emissions will be distributed and issue a revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as the Department determines is appropriate.

(b) Each emissions unit(s) shall comply with the allowable emission limitation on a twelve (12)-month rolling basis. The Department may approve the use of monitoring systems (source testing, emission factors, etc.) other than CEMS, CERMS, PEMS, or CPMS to demonstrate compliance with the allowable emission limitation.

(c) Until the Department issues the revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as required under paragraph (AA)(9)(a)(ii), the source shall continue to comply with a source-wide, multi-unit emissions cap equivalent to the level of the PAL emission limitation.

(d) Any physical change or change in the method of operation at the major stationary source will be subject to major NSR requirements if such change meets the definition of major modification in paragraph (B)(30).

(e) The major stationary source owner or operator shall continue to comply with any state or federal applicable requirements (BACT, RACT, NSPS, etc.) that may have applied either during the PAL effective period or prior to the PAL effective period except for those emission limitations that had been established pursuant to paragraph (R)(4), but were eliminated by the PAL in accordance with the provisions in paragraph (AA)(1)(b)(iii).

(10) **Renewal of a PAL.**

(a) The Department shall follow the procedures specified in paragraph (AA)(5) in approving any request to renew a PAL for a major stationary source, and shall provide both the proposed PAL level and a written rationale for the proposed PAL level to the public for review and comment. During such public review, any person may propose a PAL level for the source for consideration by the Department.

(b) **Application deadline.** A major stationary source owner or operator shall submit a timely application to the Department to request renewal of a PAL. A timely application is one that is submitted at least six (6) months prior to, but not earlier than eighteen (18) months from, the date of permit expiration. This deadline for application submittal is to ensure that the permit will not expire before the permit is renewed. If the owner or operator of a major stationary source submits a complete application to renew the PAL within this time period, then the PAL shall continue to be effective until the revised permit with the renewed PAL is issued.

(c) **Application requirements.** The application to renew a PAL permit shall contain the information required in paragraphs (AA)(10)(c)(i) through (AA)(10)(c)(iv).

(i) The information required in paragraphs (AA)(3)(a) through (AA)(3)(c).

(ii) A proposed PAL level.

(iii) The sum of the potential to emit of all emissions units under the PAL (with supporting documentation).

(iv) Any other information the owner or operator wishes the Department to consider in determining the appropriate level for renewing the PAL.

(d) **PAL adjustment.** In determining whether and how to adjust the PAL, the Department shall consider the options outlined in paragraphs (AA)(10)(d)(i) and (AA)(10)(d)(ii). However, in no case may any such adjustment fail to comply with paragraph (AA)(10)(d)(iii).

(i) If the emissions level calculated in accordance with paragraph (AA)(6) is equal to or greater than eighty (80) percent of the PAL level, the Department may renew the PAL at the same level without considering the factors set forth in paragraph (AA)(10)(d)(ii); or

(ii) The Department may set the PAL at a level that it determines to be more representative of the source's baseline actual emissions, or that it determines to be more appropriate considering air quality needs, advances in control technology, anticipated economic growth in the area, desire to reward or encourage the source's voluntary emissions reductions, or other factors as specifically identified by the Department in its written rationale.

(iii) Notwithstanding paragraphs (AA)(10)(d)(i) and (AA)(10)(d)(ii):

(1) If the potential to emit of the major stationary source is less than the PAL, the Department shall adjust the PAL to a level no greater than the potential to emit of the source; and

(2) The Department shall not approve a renewed PAL level higher than the current PAL, unless the major stationary source has complied with the provisions of paragraph (AA)(11) (increasing a PAL).

(e) If the compliance date for a state or federal requirement that applies to the PAL source occurs during the PAL effective period, and if the Department has not already adjusted for such requirement, the PAL shall be adjusted at the time of PAL permit renewal or Title V permit renewal, whichever occurs first.

(11) **Increasing a PAL during the PAL effective period.**

(a) The Department may increase a PAL emission limitation only if the major stationary source complies with the provisions in paragraphs (AA)(11)(a)(i) through (AA)(11)(a)(iv).

(i) The owner or operator of the major stationary source shall submit a complete application to request an increase in the PAL limit for a PAL major modification. Such application shall identify the emissions unit(s) contributing to the increase in emissions so as to cause the major stationary source's emissions to equal or exceed its PAL.

(ii) As part of this application, the major stationary source owner or operator shall demonstrate that the sum of the baseline actual emissions of the small emissions units, plus the sum of the baseline actual emissions of the significant and major emissions units assuming application of BACT equivalent controls, plus the sum of the allowable emissions of the new or modified emissions unit(s) exceeds the PAL. The level of control that would result from BACT equivalent controls on each significant or major emissions unit shall be determined by conducting a new BACT analysis at the time the application is submitted, unless the emissions unit is currently required to comply with a BACT or LAER requirement that was established within the preceding ten (10) years. In such a case, the assumed control level for that emissions unit shall be equal to the level of BACT or LAER with which that emissions unit must currently comply.

(iii) The owner or operator obtains a major NSR permit for all emissions unit(s) identified in paragraph (AA)(11)(a)(i), regardless of the magnitude of the emissions increase resulting from them (that is, no significant levels apply). These emissions unit(s) shall comply with any emissions requirements resulting from the major NSR process (for example, BACT), even though they have also become subject to the PAL or continue to be subject to the PAL.

(iv) The PAL permit shall require that the increased PAL level shall be effective on the day any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

(b) The Department shall calculate the new PAL as the sum of the allowable emissions for each modified or new emissions unit, plus the sum of the baseline actual emissions of the significant and major emissions units (assuming application of BACT equivalent controls as determined in accordance with paragraph (AA)(11)(a)(ii)), plus the sum of the baseline actual emissions of the small emissions units.

(c) The PAL permit shall be revised to reflect the increased PAL level pursuant to the public notice requirements of paragraph (AA)(5).

(12) **Monitoring requirements for PALs.**

(a) General requirements.

(i) Each PAL permit must contain enforceable requirements for the monitoring system that accurately determines plantwide emissions of the PAL pollutant in terms of mass per unit of time. Any monitoring system authorized for use in the PAL permit must be based on sound science and meet generally acceptable scientific procedures for data quality and manipulation. Additionally, the information generated by such system must meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL permit.

(ii) The PAL monitoring system must employ one or more of the four general monitoring approaches meeting the minimum requirements set forth in paragraphs (AA)(12)(b)(i) through (AA)(12)(b)(iv) and must be approved by the Department.

(iii) Notwithstanding paragraph (AA)(12)(a)(ii), the owner or operator may also employ an alternative monitoring approach that meets paragraph (AA)(12)(a)(i) if approved by the Department.

(iv) Failure to use a monitoring system that meets the requirements of this regulation renders the PAL invalid.

(b) Minimum performance requirements for approved monitoring approaches. The following are acceptable general monitoring approaches when conducted in accordance with the minimum requirements in paragraphs (AA)(12)(c) through (AA)(12)(b)(i):

(i) Mass balance calculations for activities using coatings or solvents;

(ii) CEMS;

(iii) CPMS or PEMS; and

(iv) Emission factors.

(c) Mass balance calculations. An owner or operator using mass balance calculations to monitor PAL pollutant emissions from activities using coating or solvents shall meet the following requirements:

(i) Provide a demonstrated means of validating the published content of the PAL pollutant that is contained in or created by all materials used in or at the emissions unit;

(ii) Assume that the emissions unit emits all of the PAL pollutant that is contained in or created by any raw material or fuel used in or at the emissions unit, if it cannot otherwise be accounted for in the process; and

(iii) Where the vendor of a material or fuel, which is used in or at the emissions unit, publishes a range of pollutant content from such material, the owner or operator must use the highest value of the range to calculate the PAL pollutant emissions unless the Department determines there is site-specific data or a site-specific monitoring program to support another content within the range.

(d) CEMS. An owner or operator using CEMS to monitor PAL pollutant emissions shall meet the following requirements:

(i) CEMS must comply with applicable Performance Specifications found in 40 CFR Part 60, Appendix B; and

(ii) CEMS must sample, analyze and record data at least every fifteen (15) minutes while the emissions unit is operating.

(e) CPMS or PEMS. An owner or operator using CPMS or PEMS to monitor PAL pollutant emissions shall meet the following requirements:

(i) The CPMS or the PEMS must be based on current site-specific data demonstrating a correlation between the monitored parameter(s) and the PAL pollutant emissions across the range of operation of the emissions unit; and

(ii) Each CPMS or PEMS must sample, analyze, and record data at least every fifteen (15) minutes, or at another less frequent interval approved by the Department, while the emissions unit is operating.

(f) Emission factors. An owner or operator using emission factors to monitor PAL pollutant emissions shall meet the following requirements:

(i) All emission factors shall be adjusted, if appropriate, to account for the degree of uncertainty or limitations in the factors' development;

(ii) The emissions unit shall operate within the designated range of use for the emission factor, if applicable; and

(iii) If technically practicable, the owner or operator of a significant emissions unit that relies on an emission factor to calculate PAL pollutant emissions shall conduct validation testing to determine a site-specific emission factor within six (6) months of PAL permit issuance, unless the Department determines that testing is not required.

(g) A source owner or operator must record and report maximum potential emissions without considering enforceable emission limitations or operational restrictions for an emissions unit during any period of time that there is no monitoring data, unless another method for determining emissions during such periods is specified in the PAL permit.

(h) Notwithstanding the requirements in paragraphs (AA)(12)(c) through (AA)(12)(g), where an owner or operator of an emissions unit cannot demonstrate a correlation between the monitored parameter(s) and the PAL pollutant emissions rate at all operating points of the emissions unit, the Department shall, at the time of permit issuance:

(i) Establish default value(s) for determining compliance with the PAL based on the highest potential emissions reasonably estimated at such operating point(s); or

(ii) Determine that operation of the emissions unit during operating conditions when there is no correlation between monitored parameter(s) and the PAL pollutant emissions is a violation of the PAL.

(i) Re-validation. All data used to establish the PAL pollutant must be re-validated through performance testing or other scientifically valid means approved by the Department. Such testing must occur at least once every five (5) years after issuance of the PAL.

(13) **Recordkeeping requirements.**

(a) The PAL permit shall require an owner or operator to retain a copy of all records necessary to determine compliance with any requirement of Section (AA) and of the PAL, including a determination of each emissions unit's twelve (12)-month rolling total emissions, for five (5) years from the date of such record.

(b) The PAL permit shall require an owner or operator to retain a copy of the following records for the duration of the PAL effective period plus five (5) years:

(i) A copy of the PAL permit application and any applications for revisions to the PAL; and

(ii) Each annual certification of compliance pursuant to Title V and the data relied on in certifying the compliance.

(14) **Reporting and notification requirements.** The owner or operator shall submit semi-annual monitoring reports and prompt deviation reports to the Department in accordance with Regulation 61-62.70. The reports shall meet the requirements in paragraphs (AA)(14)(a) through (AA)(14)(c).

(a) **Semi-annual report.** The semi-annual report shall be submitted to the Department within 30 days of the end of each reporting period. This report shall contain the information required in paragraphs (AA)(14)(a)(i) through (AA)(14)(a)(vii).

(i) The identification of owner and operator and the permit number.

(ii) Total annual emissions (tons per year) based on a twelve (12)-month rolling total for each month in the reporting period recorded pursuant to paragraph (AA)(13)(a).

(iii) All data relied upon, including, but not limited to, any Quality Assurance or Quality Control data, in calculating the monthly and annual PAL pollutant emissions.

(iv) A list of any emissions units modified or added to the major stationary source during the preceding six (6)-month period.

(v) The number, duration, and cause of any deviations or monitoring malfunctions (other than the time associated with zero and span calibration checks), and any corrective action taken.

(vi) A notification of a shutdown of any monitoring system, whether the shutdown was permanent or temporary, the reason for the shutdown, the anticipated date that the monitoring system will be fully operational or replaced with another monitoring system, and whether the emissions unit monitored by the monitoring system continued to operate, and the calculation of the emissions of the pollutant or the number determined by method included in the permit, as provided by (AA)(12)(g).

(vii) A signed statement by the responsible official (as defined by Regulation 61-62.70) certifying the truth, accuracy, and completeness of the information provided in the report.

(b) **Deviation report.** The major stationary source owner or operator shall promptly submit reports of any deviations or exceedance of the PAL requirements, including periods where no monitoring is available. A report submitted pursuant to 40 CFR 70.6(a)(3)(iii)(B) shall satisfy this reporting requirement. The deviation reports

shall be submitted within the time limits prescribed by the applicable program implementing 40 CFR 70.6(a)(3)(iii)(B). The reports shall contain the following information:

(i) The identification of owner and operator and the permit number;

(ii) The PAL requirement that experienced the deviation or that was exceeded;

(iii) Emissions resulting from the deviation or the exceedance; and

(iv) A signed statement by the responsible official (as defined by Regulation 61-62.70) certifying the truth, accuracy, and completeness of the information provided in the report.

(c) **Re-validation results.** The owner or operator shall submit to the Department the results of any re-validation test or method within three (3) months after completion of such test or method.

(15) **Transition requirements.**

(a) The Department may not issue a PAL that does not comply with the requirements in paragraphs (AA)(1) through (AA)(15) after the date these provisions become effective.

(b) The Department may supersede any PAL that was established prior to the date these provisions become effective with a PAL that complies with the requirements of paragraphs (AA)(1) through (AA)(15).

(BB) If any provision of this regulation, or the application of such provision to any person or circumstance, is held invalid, the remainder of this regulation, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

61-62.5. Standard No. 7.1. Nonattainment New Source Review (NSR)

(A) Applicability.

(1) This rule applies to all major stationary sources constructed or modified in any nonattainment area as designated in 40 Code of Federal Regulations (CFR) 81.341 ("nonattainment area") if the emissions from such facility will cause or contribute to concentrations of a regulated NSR pollutant (as defined in paragraph (B)(32)) for which the nonattainment area was designated as nonattainment. Applicability to this regulation shall be based on the pollutant emission rate set out in paragraph (B)(37) for only those pollutants for which the area's designation is based.

(a) The requirements of this regulation apply to the construction of any new major stationary source or the major modification of any existing major stationary source, except as provided in Section(A)(10).

(b) No new major stationary source or major modification to which the requirements of this regulation apply shall begin actual construction without a permit that states that the major stationary source or major modification will meet those requirements. The Department has authority to issue any such permit.

(2) **Redesignation to attainment**. If any nonattainment area to which this regulation applies is later designated in 40 CFR 81.341 as attainment, all sources in that nonattainment area subject to this regulation before the redesignation date shall continue to comply with this regulation.

(3) For any area designated as nonattainment a major stationary source or major modification that is major for volatile organic compounds (VOCs) or nitrogen oxides is also major for ozone.

(4) Except as otherwise provided in paragraph (A)(9), and consistent with the definition of major modification as defined in paragraph (B)(21)(a), a project is a major modification for a regulated NSR pollutant if it causes two types of emissions increases – a significant emissions increase (as defined in paragraph (B)(38), and a significant net emissions increase (as defined in paragraphs (B)(24) and (B)(37)). The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.

(5) The procedure for calculating, before beginning actual construction, whether a significant emissions increase (the first step of the process) will occur depends upon the type of emissions units being modified, according to paragraphs (A)(6) through (A)(8). The procedure for calculating, before beginning actual construction, whether a significant net emissions increase will occur at the major stationary source (the second step of the process) is contained in the definition in paragraph (B)(24). Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

(6) **Actual-to-projected-actual applicability test for projects that only involve existing emissions units**. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the projected actual emissions (as defined in paragraph (B)(31)) and the baseline actual emissions (as defined in paragraphs (B)(3)(a) and (B)(3)(b), as applicable), for each existing emissions unit, equals or exceeds the significant amount for that pollutant (as defined in paragraph (B)(37)).

(7) **Actual-to-potential test for projects that only involve construction of a new emissions unit(s)**. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the potential to emit (as defined in paragraph (B)(27)) from each new emissions unit following completion of the project and the baseline actual emissions (as defined in paragraph (B)(3)(c)) of these units before the project equals or exceeds the significant amount for that pollutant (as defined in paragraph (B)(37)).

(8) **Hybrid test for projects that involve multiple types of emissions units**. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in paragraphs (A)(6) and (A)(7) as applicable with respect to each emissions unit, for each type of emissions unit equals or exceeds the significant amount for that pollutant (as defined in paragraph (B)(37)).

(9) For any major stationary source for a Plantwide Applicability Limitation (PAL) for a regulated NSR pollutant, the major stationary source shall comply with requirements under Section (N).

(10) The provisions of this section shall not apply to a particular major stationary source or major modification if the source or modification would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to any of the following categories:

(a) Coal cleaning plants (with thermal dryers);

(b) Kraft pulp mills;

(c) Portland cement plants;

(d) Primary zinc smelters;

(e) Iron and steel mills;

(f) Primary aluminum ore reduction plants;

(g) Primary copper smelters;

(h) Municipal incinerators capable of charging more than 250 tons of refuse per day;

(i) Hydrofluoric, sulfuric, or nitric acid plants;

(j) Petroleum refineries;

(k) Lime plants;

(l) Phosphate rock processing plants;

(m) Coke oven batteries;

(n) Sulfur recovery plants;

(o) Carbon black plants (furnace process);

(p) Primary lead smelters;

(q) Fuel conversion plants;

(r) Sintering plants;

(s) Secondary metal production plants;

(t) Chemical process plants - The term chemical processing plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140;

(u) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;

(v) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(w) Taconite ore processing plants;

(x) Glass fiber processing plants;

(y) Charcoal production plants;

(z) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; and

(aa) Any other stationary source category which, as of August 7, 1980, is being regulated under Section 111 or 112 of the Clean Air Act.

(B) Definitions. For the purposes of this regulation:

(1)(a) **Actual emissions** means the actual rate of emissions of a regulated NSR pollutant from an emissions unit, as determined in accordance with paragraphs (B)(1)(b) through (B)(1)(d), except that this definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a PAL under Section (N). Instead, paragraphs (B)(3) and (B)(31) shall apply for those purposes.

(b) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive twenty-four (24)-month period which precedes the particular date and which is representative of normal source operation. The Department shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(c) The Department may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(d) For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

(2) **Allowable emissions** means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

(a) The applicable standards as set forth in 40 CFR Parts 60 and 61;

(b) Any applicable State Implementation Plan emissions limitation, including those with a future compliance date; or

(c) The emissions rate specified as a federally enforceable permit condition, including those with a future compliance date.

(3) **Baseline actual emissions** means the rate of emissions, in tons per year, of a regulated NSR pollutant, as determined in accordance with paragraphs (B)(3)(a) through (B)(3)(d).

(a) For any existing electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive twenty-four (24)-month period selected by the owner or operator within the five (5)-year period immediately preceding when the owner or operator begins actual construction of the project. The Department shall allow the use of a different time period upon a determination that it is more representative of normal source operation.

(i) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(ii) The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive twenty-four (24)-month period.

(iii) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive twenty-four (24)-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive twenty-four (24)-month period can be used for each regulated NSR pollutant.

(iv) The average rate shall not be based on any consecutive twenty-four (24)-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by paragraph (B)(3)(a)(ii).

(b) For an existing emissions unit (other than an electric utility steam generating unit), baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive twenty-four (24)-month period selected by the owner or operator within the ten (10)-year

period immediately preceding either the date the owner or operator begins actual construction of the project, or the date a complete permit application is received by the Department for a permit required either under this section or under a plan approved by the Administrator whichever is earlier, except that the ten (10)-year period shall not include any period earlier than November 15, 1990. The Department reserves the right to determine if the twenty-four (24)-month period selected is appropriate.

(i) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(ii) The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive twenty-four (24)-month period.

(iii) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply, had such major stationary source been required to comply with such limitations during the consecutive twenty-four (24)-month period. However, if an emission limitation is part of a maximum achievable control technology standard that the Administrator proposed or promulgated under 40 CFR Part 63, the baseline actual emissions need only be adjusted if the state has taken credit for such emissions reductions in an attainment demonstration or maintenance plan consistent with the requirements of paragraph (D)(7)

(iv) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive twenty-four (24)-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive twenty-four (24)-month period can be used for each regulated NSR pollutant.

(v) The average rate shall not be based on any consecutive twenty-four (24)-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by paragraphs (B)(3)(b)(ii) and (B)(3)(b)(iii).

(c) For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit.

(d) For a PAL for a major stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in paragraph (B)(3)(a), for other existing emissions units in accordance with the procedures contained in paragraph (B)(3)(b), and for a new emissions unit in accordance with the procedures contained in paragraph (B)(3)(c).

(4) **Begin actual construction** means, in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operating this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

(5) **Best available control technology (BACT)** means an emissions limitation (including a visible emissions standard) based on the maximum degree of reduction for each regulated NSR pollutant which would be emitted from any proposed major stationary source or major modification which the Department, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR Parts 60

or 61. If the Department determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination thereof, may be prescribed instead to satisfy the requirement for the application of BACT. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results.

(6)(a) **Building, structure, facility, or installation** means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (which have the same two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101-0066 and 003-005-00176-0, respectively).

(b) Notwithstanding the provisions of paragraph (B)(6)(a), building, structure, facility, or installation means, for onshore activities under Standard Industrial Classification (SIC) Major Group 13: Oil and Gas Extraction, all of the pollutant-emitting activities included in Major Group 13 that are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant emitting activities shall be considered adjacent if they are located on the same surface site; or if they are located on surface sites that are located within one-fourth (1/4) of a mile of one another (measured from the center of the equipment on the surface site) and they share equipment. Shared equipment includes, but is not limited to, produced fluids storage tanks, phase separators, natural gas dehydrators, or emissions control devices. Surface site, as used in this paragraph, has the same meaning as in 40 CFR 63.761.

(7) **Temporary clean coal technology demonstration project** means a clean coal technology demonstration project that is operated for a period of five (5) years or less, and which complies with the State Implementation Plan for the state in which the project is located and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

(8) **Clean coal technology** means any technology, including technologies applied at the precombustion, combustion, or post combustion stage, at a new or existing facility which will achieve significant reductions in air emissions of sulfur dioxide or nitrogen oxides associated with the utilization of coal in the generation of electricity, or process steam which was not in widespread use as of November 15, 1990.

(9) **Clean coal technology demonstration project** means a project using funds appropriated under the heading "Department of Energy-Clean Coal Technology," up to a total amount of $2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency. The Federal contribution for a qualifying project shall lie at least twenty (20) percent of the total cost of the demonstration project.

(10) **Commence** as applied to construction of a major stationary source or major modification means that the owner or operator has all necessary preconstruction approvals or permits and either has:

(a) Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(b) Entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

(11) **Construction** means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) that would result in a change in emissions.

(12) **Continuous emissions monitoring system (CEMS)** means all of the equipment that may be required to meet the data acquisition and availability requirements, to sample, condition (if applicable), analyze, and provide a record of emissions on a continuous basis.

(13) **Continuous emissions rate monitoring system (CERMS)** means the total equipment required for the determination and recording of the pollutant mass emissions rate (in terms of mass per unit of time).

(14) **Continuous parameter monitoring system (CPMS)** means all of the equipment necessary to meet the data acquisition and availability requirements, to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O_2 or CO_2 concentrations), and to record average operational parameter value(s) on a continuous basis.

(15) **Electric utility steam generating unit** means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than twenty-five (25) MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

(16) **Emissions unit** means any part of a stationary source that emits or would have the potential to emit any regulated NSR pollutant and includes an electric utility steam generating unit as defined in paragraph (B)(15) of this section. For purposes of this section, there are two types of emissions units as described in paragraphs (B)(16)(a) and (B)(16)(b) of this section.

(a) A new emissions unit is any emissions unit which is (or will be) newly constructed and which has existed for less than two (2) years from the date such emissions unit first operated.

(b) An existing emissions unit is any emissions unit that does not meet the requirements in paragraph (B)(16)(a) of this section. A replacement unit, as defined in paragraph (B)(33), is an existing emissions unit.

(17) **Federal Land Manager** means, with respect to any lands in the United States, the Secretary of the Department with authority over such lands.

(18) **Federally enforceable** means all limitations and conditions which are enforceable by the Administrator, including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within any applicable State implementation plan, any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Part 51, Subpart I, including operating permits issued under an EPA-approved program that is incorporated into the State implementation plan and expressly requires adherence to any permit issued under such program.

(19) **Fugitive emissions** means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(20) **Lowest achievable emission rate (LAER)** means, for any source, the more stringent rate of emissions based on the following:

(a) The most stringent emissions limitation which is contained in the implementation plan of any state for such class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that such limitations are not achievable; or

(b) The most stringent emissions limitation which is achieved in practice by such class or category of stationary sources. This limitation, when applied to a modification, means the lowest achievable emission rate for the new or modified emission units within the stationary source. In no event shall the application of the term allow a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under an applicable new source standard of performance.

(21)(a) **Major modification** means any physical change in or change in the method of operation of a major stationary source that would result in:

(i) A significant emissions increase of a regulated NSR pollutant (as defined in paragraph (B)(32)); and

(ii) A significant net emissions increase of that pollutant from the major stationary source.

(b) Any significant emissions increase (as defined in paragraph (B)(38)) from any emissions units or net emissions increase (as defined in paragraph (B)(24)) at a major stationary source that is significant for volatile organic compounds or nitrogen oxides shall be considered significant for ozone.

(c) A physical change or change in the method of operation shall not include:

(i) Routine maintenance, repair, and replacement;

(ii) Use of an alternative fuel or raw material by reason of an order under Sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

(iii) Use of an alternative fuel by reason of an order or rule under Section 125 of the Clean Air Act;

(iv) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(v) Use of an alternative fuel or raw material by a stationary source which;

(1) The source was capable of accommodating before December 21, 1976, unless such change would be prohibited under any federally enforceable permit condition which was established after December 21, 1976, pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Part 51, Subpart I or Section 51.166; or

(2) The source is approved to use under any permit issued under regulations approved pursuant to this section;

(vi) An increase in the hours of operation or in the production rate, unless such change is prohibited under any federally enforceable permit condition which was established after December 21, 1976 pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Part 51, Subpart I or 40 CFR 51.166;

(vii) Any change in ownership at a stationary source;

(viii) [Reserved]

(ix) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

(1) The South Carolina State Implementation Plan, and

(2) Other requirements necessary to attain and maintain the National Ambient Air Quality Standard (NAAQS) during the project and after it is terminated.

(d) This definition shall not apply with respect to a particular regulated NSR pollutant when the major stationary source is complying with the requirements under Section N for a PAL for that pollutant. Instead, the definition at paragraph (N)(2)(h) shall apply.

(e) [Reserved]

(22)(a) **Major stationary source** means:

(i) Any stationary source of air pollutants that emits, or has the potential to emit, one-hundred (100) tons per year or more of any regulated NSR pollutant, except that lower emissions thresholds shall apply in areas subject to Subpart 2, Subpart 3, or Subpart 4 of Part D, Title I of the Clean Air Act, according to the following table:

Nonattainment Area Classification	NO_X	VOC	CO	SO_2	PM_{10}	$PM_{2.5}$
	All values expressed in tons per year					
Ozone: Marginal and Moderate	100	100				
Ozone: Serious	50	50				
Ozone: Severe	25	25				
Ozone: Extreme	10	10				
CO			100			
CO: Serious, where stationary sources contribute significantly to CO levels			50			
PM_{10}					100	
PM_{10}: Serious					70	
$PM_{2.5}$	100	100		100		100
$PM_{2.5}$ in any serious nonattainment area for $PM_{2.5}$.	70	70		70		70
SO_2				100		
NO_X	100					

(ii) Any physical change that would occur at a stationary source not qualifying under paragraph (B)(22)(a) as a major stationary source, if the change would constitute a major stationary source by itself.

(b) A major stationary source that is major for volatile organic compounds or nitrogen oxides shall be considered major for ozone.

(c) The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this paragraph whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:

(i) Coal cleaning plants (with thermal dryers);

(ii) Kraft pulp mills;

(iii) Portland cement plants;

(iv) Primary zinc smelters;

(v) Iron and steel mills;

(vi) Primary aluminum ore reduction plants;

(vii) Primary copper smelters;

(viii) Municipal incinerators capable of charging more than 250 tons of refuse per day;

(ix) Hydrofluoric, sulfuric, or nitric acid plants;

(x) Petroleum refineries;

(xi) Lime plants;

(xii) Phosphate rock processing plants;

(xiii) Coke oven batteries;

(xiv) Sulfur recovery plants;

(xv) Carbon black plants (furnace process);

(xvi) Primary lead smelters;

(xvii) Fuel conversion plants;

(xviii) Sintering plants;

(xix) Secondary metal production plants;

(xx) Chemical process plants – The term chemical processing plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140;

(xxi) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;

(xxii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(xxiii) Taconite ore processing plants;

(xxiv) Glass fiber processing plants;

(xxv) Charcoal production plants;

(xxvi) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; and

(xxvii) Any other stationary source category which, as of August 7, 1980, is being regulated under Section 111 or 112 of the Clean Air Act.

(23) **Necessary preconstruction approvals or permits** means those permits or approvals required under federal air quality control laws and regulations and those air quality control laws and regulations which are part of the applicable State Implementation Plan.

(24)(a) **Net emissions increase** means, with respect to any regulated NSR pollutant emitted by a major stationary source, the amount by which the sum of the following exceeds zero:

(i) The increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated pursuant to paragraphs (A)(4) through (A)(8); and

(ii) Any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable. Baseline actual emissions for calculating increases and decreases under this paragraph (B)(24)(a)(ii) shall be determined as provided in paragraph (B)(3), except that paragraphs (B)(3)(a)(iii) and (B)(3)(b)(iv) shall not apply.

(b) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between:

(i) The date five (5) years before construction on the particular change commences; and

(ii) The date that the increase from the particular change occurs.

(c) An increase or decrease in actual emissions is creditable only if:

(i) The Department has not relied on it in issuing a permit for the source which permit is in effect when the increase in actual emissions from the particular change occurs;

(ii) [Reserved]

(d) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level;

(e) A decrease in actual emissions is creditable only to the extent that:

(i) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(ii) It is enforceable as a practical matter at and after the time that actual construction on the particular change begins;

(iii) The Department has not relied on it in issuing any permit under regulations approved pursuant to 40 CFR Part 51, Subpart I or the Department has not relied on it in demonstrating attainment or reasonable further progress; and

(iv) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(f) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days;

(g) Paragraph (B)(1)(b) shall not apply for determining creditable increases and decreases or after a change.

(25) **Nonattainment major new source review (NSR) program** means a major source preconstruction permit program that has been approved by the Administrator and incorporated into the plan to implement the requirements of this regulation, or a program that implements 40 CFR Part 51, Appendix S, Sections I through VI. Any permit issued under such a program is a major NSR permit.

(26) **Pollution prevention** means any activity that through process changes, product reformulation or redesign, or substitution of less polluting raw materials, eliminates or reduces the release of air pollutants (including fugitive emissions) and other pollutants to the environment prior to recycling, treatment, or disposal; it does not mean recycling (other than certain "in-process recycling" practices), energy recovery, treatment, or disposal.

(27) **Potential to emit** means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

(28) **Predictive emissions monitoring system (PEMS)** means all of the equipment necessary to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O_2 or CO_2 concentrations), and calculate and record the mass emissions rate (for example, lb/hr) on a continuous basis.

(29) **Prevention of Significant Deterioration (PSD) permit** means any permit that is issued under a major source preconstruction permit program that has been approved by the Administrator and incorporated into the plan to implement the requirements of 40 CFR 51.166, or under the program in 40 CFR 52.21.

(30) **Project** means a physical change in, or change in the method of operation of, an existing major stationary source.

(31)(a) **Projected actual emissions** means, the maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated NSR pollutant in any one of the five (5) years (twelve (12)-month period) following the date the unit resumes regular operation after the project, or in any one of the ten (10) years following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit of that regulated NSR pollutant and full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the major stationary source.

(b) In determining the projected actual emissions under paragraph (B)(31)(a) before beginning actual construction, the owner or operator of the major stationary source:

(i) Shall consider all relevant information, including but not limited to, historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, the company's filings with the state or federal regulatory authorities, and compliance plans under the approved plan; and

(ii) Shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions; and

(iii) Shall exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive twenty-four (24)-month period used to establish the baseline actual emissions under paragraph (B)(3) and that are also unrelated to the particular project, including any increased utilization due to product demand growth; or,

(iv) In lieu of using the method set out in paragraphs (B)(31)(b)(i) through (B)(31)(b)(iii) may elect to use the emissions unit's potential to emit, in tons per year, as defined in paragraph (B)(27) of this section.

(32) **Regulated NSR pollutant,** for purposes of this regulation, means the following:

(a) Nitrogen oxides or any volatile organic compounds;

(b) Any pollutant for which a national ambient air quality standard has been promulgated; or

(c) Any pollutant that is identified under this paragraph as a constituent or precursor of a general pollutant listed under paragraphs (B)(32)(a) or (B)(32)(b), provided that such constituent or precursor pollutant may only be regulated under NSR as part of regulation of the general pollutant. Precursors identified by the Administrator for purposes of NSR are the following:

(i) Volatile organic compounds and nitrogen oxides are precursors to ozone in all ozone nonattainment areas;

(ii) Sulfur dioxide, volatile organic compounds, nitrogen oxides, and ammonia are precursors to $PM_{2.5}$ in any $PM_{2.5}$ nonattainment area.

(d) $PM_{2.5}$ emissions and PM_{10} emissions shall include gaseous emissions from a source or activity, which condense to form particulate matter at ambient temperatures. On or after January 1, 2011 (or any earlier date established in the upcoming rulemaking codifying test methods), such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for $PM_{2.5}$ and PM_{10} in nonattainment major NSR permits issued under this ruling. Compliance with emissions limitations for $PM_{2.5}$ and PM_{10} issued prior to this date shall not be based on condensable particulate matter unless required by the terms and conditions of the permit or the applicable implementation plan. Applicability determinations made prior to this date without accounting for condensable particulate matter shall not be considered in violation of this section unless the applicable implementation plan required condensable particulate matter to be included.

(33) **Replacement unit** means an emissions unit for which all the criteria listed in (B)(33)(a) through (B)(33)(d) are met. No creditable emission reductions shall be generated from shutting down the existing emissions unit that is replaced.

(a) The emissions unit is a reconstructed unit within the meaning of 40 CFR 60.15(b)(1), or the emissions unit completely takes the place of an existing emissions unit;

(b) The emissions unit is identical to or functionally equivalent to the replaced emissions unit;

(c) The replacement does not alter the basic design parameters of the process unit; and

(d) The replaced emissions unit is permanently removed from the major stationary source, otherwise permanently disabled, or permanently barred from operation by a permit that is enforceable as a practical matter. If the replaced emissions unit is brought back into operation, it shall constitute a new emissions unit.

(34) **Resource recovery facility** means any facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse. Energy conversion facilities must utilize solid waste to provide more than fifty (50) percent of the heat input to be considered a resource recovery facility under this Ruling.

(35) **Reviewing authority** means the state air pollution control agency, local agency, other state agency, Indian tribe, or other agency authorized by the Administrator to carry out a permit program under 40 CFR 51.165 and 40 CFR 51.166, or the Administrator in the case of EPA-implemented permit programs under 40 CFR 52.21.

(36) **Secondary emissions** means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. Secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions include emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

(37) **Significant** means, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant		**Emissions Rate** (tons per year)
Carbon monoxide	Marginal and Moderate Nonattainment Areas	100
	Serious Nonattainment Areas	50*
Nitrogen oxides		40
Sulfur dioxide		40
PM_{10}		15
$PM_{2.5}$	of direct $PM_{2.5}$	10
	of SO_2, NO_X, or VOC	40
Ozone	Marginal and Moderate Nonattainment Areas	40 (of VOC or NO_X)
	Serious and Severe Nonattainment Areas	25 (of VOC or NO_X)
	Extreme Nonattainment Areas	Any (of VOC or NO_X)
Lead		0.6

* The significant emission rate of 50 tons for carbon monoxide in serious nonattainment areas shall only apply if the Administrator has made a determination that stationary sources significantly contribute to the carbon monoxide levels in the area.

(38) **Significant emissions increase** means, for a regulated NSR pollutant, an increase in emissions that is significant (as defined in paragraph (B)(37)) for that pollutant.

(39) **Stationary source** means any building, structure, facility, or installation which emits or may emit a regulated NSR pollutant.

(40) **Volatile organic compounds (VOC)** is as defined in Regulation 61-62.1, Section (I), Definitions.

(C)(1) **Permitting requirements.** If the Department finds that the major stationary source or major modification would be constructed in an area designated in 40 CFR 81.341 as nonattainment for a pollutant for which the stationary source or modification is major, approval may be granted only if the following conditions are met:

(a) The major stationary source or major modification is required to meet an emission limitation which specifies the lowest achievable emission rate (LAER) for such source.

(b) The applicant must certify that all existing major sources owned or operated by the applicant (or any entity controlling, controlled by, or under common control with the applicant) in the same state as the proposed source are in compliance with all applicable emission limitations and standards under the Clean Air Act (or are in compliance with an expeditious schedule which is federally enforceable or contained in a court decree).

(c) The owner or operator of the proposed new major stationary source or major modification will obtain sufficient emission reductions of the nonattainment pollutant from other sources. Emission reductions shall be in effect and enforceable prior to the date the new source or modification commences operation. The emission reductions shall be obtained in accordance with the requirements in Section (D), Offset standards.

(d) The emission offsets must provide a positive net air quality benefit in the affected area as determined by 40 CFR Part 51, Appendix S, Emission Offset Interpretative Ruling.

(e) Alternative Sites Analysis. An analysis of alternative sites, sizes, production processes, and environmental control techniques for such proposed source demonstrates that benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification shall be required.

(2) Exemptions. Temporary emission sources, such as pilot plants and portable facilities which will be relocated outside of the nonattainment area after a short period of time, are exempt from the requirements of paragraphs (C)(1)(c) and (C)(1)(d) of this section.

(3) Secondary emissions. Secondary emissions need not be considered in determining whether the stationary source or modification is major. However, if a source is subject to this regulation on the basis of the direct emissions from the source, the applicable conditions in paragraph (C)(1) must also be met for secondary emissions. However, secondary emissions may be exempt from paragraphs (C)(1)(a) and (C)(1)(b) of this section.

(4) The requirements of this regulation applicable to major stationary sources and major modifications of PM_{10} shall also apply to major stationary sources and major modifications of PM_{10} precursors, except where the Administrator determines that such sources do not contribute significantly to PM_{10} levels that exceed the PM_{10} ambient standards in the area.

(D) Offset standards.

(1) All emission reductions claimed as offset credit shall be permanent, quantifiable, federally enforceable, and surplus;

(2) Where the permitted emissions limit allows greater emissions than the potential to emit of the source (as when a state has a single particulate emission limit for all fuels), emissions offset credit will be allowed only for control below this potential;

(3) For an existing fuel combustion source, credit shall be based on the allowable emissions for the type of fuel being burned at the time the application to construct is filed. If the existing source commits to switch to a cleaner fuel at some future date, emissions offset credit based on the allowable (or actual) emissions for the fuels involved is not acceptable, unless the permit is conditioned to require the use of a specified alternative control measure which would achieve the same degree of emissions reduction should the source switch back to a dirtier fuel at some later date.

(4) Emissions reductions achieved by shutting down an existing source or curtailing production or operating hours below baseline levels may be generally credited for offsets if the shutdown or curtailment occurred after the last day of the base year for the SIP planning process. For purposes of this paragraph, the Department may choose to consider a prior shutdown or curtailment to have occurred after the last day of the base year

if the projected emissions inventory used to develop the attainment demonstration explicitly includes the emissions from such previously shutdown or curtailed emission units. No credit may be given for shutdowns that occurred before August 7, 1977.

(5) Emissions reductions achieved by shutting down an existing emissions unit or curtailing production or operating hours and that do not meet the requirements in paragraph (D)(4) may be generally credited only if:

(a) The shutdown or curtailment occurred on or after the date the new source permit application is filed; or,

(b) The applicant can establish that the proposed new source is a replacement for the shutdown or curtailed source, and the emission reductions achieved by the shutdown or curtailment met the requirements of paragraph (D)(4).

(6) No emissions credit may be allowed for replacing one hydrocarbon compound with another of lesser reactivity, except for those compounds listed in Table 1 of EPA's "Recommended Policy on Control of Volatile Organic Compounds" (42 FR 35314, July 8, 1977);

(7) Credit for an emissions reduction can be claimed to the extent that the Department has not relied on it in issuing any permit under regulations approved pursuant to 40 CFR Part 51, Subpart I or the Department has not relied on it in demonstrating attainment or reasonable further progress.

(8) The total tonnage of increased emissions, in tons per year, resulting from a major modification that must be offset in accordance with Section 173 of the Clean Air Act shall be determined by summing the difference between the allowable emissions after the modification (as defined by paragraph (B)(2)) and the actual emissions before the modification (as defined in paragraph (B)(1)) for each emissions unit.

(9) If a designated nonattainment area is projected to be an attainment area as part of an approved SIP control strategy by the new source start-up date, offsets would not be required if the new source would not cause a new violation.

(10) Any facility that has the potential to emit any NAAQS pollutant in an amount greater than five (5) tons per year and that is located in a federally-designated nonattainment area shall be eligible to create emission offsets.

(11) Emission reductions shall have been created by an existing facility that has obtained an enforceable air quality permit or letter of permit cancellation resulting from the surrender of the source's permit(s).

(12) Emission reductions may be created by any of, or a combination of, the following methods:

(a) Installation of control equipment beyond what is necessary to comply with existing requirements;

(b) A change in process inputs, formulations, products or product mix, fuels, or raw materials;

(c) A reduction in actual emission rates; or

(d) Any other enforceable method that the Department determines to result in real, permanent, quantifiable, federally enforceable, and surplus reduction of emissions.

(13) A completed emissions offset submittal must be received by the Department within one (1) year of the date of the creation of the reductions. Emission offsets not requested within one (1) year of the date of the creation of the reductions will be permanently retired. Prior to commencing operation of a permitted emissions unit, Department approval for the required emission offsets must be granted.

(14) The following emission reductions that are not considered surplus, are ineligible for emission offsets:

(a) Emission reductions that have previously been used to avoid Regulation 61-62.5 Standard No. 7, Prevention of Significant Deterioration, or Regulation 61-62.5 Standard No. 7.1, Nonattainment New Source Review (NSR), through a netting demonstration;

(b) Emission reductions of hazardous air pollutants, listed in Section 112(b) of the Clean Air Act, to the extent needed to comply with Regulation 61-62.61, National Emission Standards for Hazardous Air Pollutants (NESHAP), and Regulation 61-62.63, National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories. However, emission reductions of hazardous volatile organic compound (VOC) and/or hazardous particulate matter (PM) air pollutants beyond the amount of reductions necessary to comply with Regulation 61-62.61, NESHAP, and Regulation 61-62.63, NESHAP for Source Categories, are considered surplus;

(c) Emission reductions of nitrogen oxides (NO_X), sulfur dioxide (SO_2), particulate matter (PM), and VOCs to the extent needed to comply with Section 111 of the Clean Air Act and Regulation 61-62.60, South Carolina Designated Facility Plan and New Source Performance Standards (NSPS). However, emission reductions of NO_X, SO_2, PM, and VOCs beyond the amount of reductions necessary to comply with Regulation 61-62.60, South Carolina Designated Facility Plan and NSPS, are considered surplus;

(d) Emission reductions from emission units covered under an agreement, order, or variance for exceeding an emission standard until compliance is demonstrated with the emission standard that is the subject of the agreement, order or variance;

(e) Emission reductions from sources that have operated less than twelve (12) months;

(f) Emission reductions required in order to comply with any state or federal regulation not listed above, unless these reductions are in excess of the amount required by the state or federal regulation; and

(g) Emission reductions from facilities that have received a Department transmittal letter with notification of permit cancellation due to the facility's decision to close out its operating permit without a request to qualify facility emission reductions as offsets.

(E) Calculation of Emission Offsets

(1) The following procedure shall be used to calculate emission offsets:

(a) The source shall calculate average annual actual emissions, in tons per year, before the emission reduction using data from the twenty-four (24)-month period immediately preceding the reduction in emissions. With the Department's approval, the use of a different time period, not to exceed ten (10) years immediately preceding the reduction in emissions, may be allowed if the owner or operator of the source documents that such period is more representative of normal source operation, but not prior to the base year inventory date, which is the last day of the two (2) years preceding the date of nonattainment designation; and

(b) The emission offsets created shall be calculated by subtracting the allowable emissions following the reduction from the average annual actual emissions prior to the reduction.

(2) For any emissions unit that has been operating for a consecutive period of at least twelve (12) months but less than twenty-four (24) months on the base year inventory date, based on the unit's potential to emit, emissions shall be calculated equal to the amount needed to complete a twenty-four (24)-month period on the base year inventory date.

(F) Location of offsetting emissions. Emission offsets shall be obtained from sources currently operating within the same designated nonattainment area as the new or modified stationary source. Emission offsets may be obtained from another nonattainment area with the Department's approval only if:

(1) The other area has an equal or higher nonattainment classification than the area in which the proposed source is located, and

(2) Emissions from the other area contribute to a violation of the NAAQS in the nonattainment area in which the source is located.

(G) Emission offsetting ratios. Emission offsets shall be required in nonattainment areas in accordance with the following provisions:

(1) Emissions for carbon monoxide (CO), nitrogen dioxide (NO_2), sulfur dioxide (SO_2), lead (Pb), and particulate matter (PM_{10} and $PM_{2.5}$) nonattainment areas shall be offset at a ratio greater than one to one.

(2) Emissions increases for ozone nonattainment areas shall be offset for volatile organic compounds (VOCs) and NO_X in accordance with the following table:

Designation	Offset ratios
Marginal	1.1 to 1
Moderate	1.15 to 1
Serious	1.2 to 1
Severe	1.3 to 1
Extreme	1.5 to 1

(H) Interpollutant offsetting.

(1) In meeting the emissions offset requirements of Section (D) the emissions offsets obtained shall be for the same regulated NSR pollutant unless interpollutant offsetting is permitted for a particular pollutant as specified in this paragraph.

(a) The offset requirement(s) of Section (D) for emissions of the ozone precursors NO_X and VOC may be satisfied by offsetting reductions of emissions of either of those precursors, if all other requirements for such offsets are also satisfied.

(b) The offset requirements of Section (D) for direct $PM_{2.5}$ emissions or emissions of precursors of $PM_{2.5}$ may be satisfied by offsetting reductions of direct $PM_{2.5}$ emissions or emissions of any $PM_{2.5}$ precursor identified under paragraph (B)(32)(c) if such offsets comply with the interprecursor trading hierarchy and ratio established in the approved plan for a particular nonattainment area.

(2) The control requirements applicable to major stationary sources and major modifications of $PM_{2.5}$ shall also apply to major stationary sources and major modifications of $PM_{2.5}$ precursors in a $PM_{2.5}$ nonattainment area, except that the Department may exempt new major stationary sources and major modifications of a particular precursor from the requirements for $PM_{2.5}$ if the nonattainment NSR precursor demonstration submitted to and approved by the Administrator shows that such sources do not contribute significantly to $PM_{2.5}$ levels that exceed the standard in the area. Any demonstration submitted for the Administrator's review must meet the conditions for a nonattainment NSR precursor demonstration as set forth in 40 CFR 51.1006(a)(3).

(I) Banking of emission offsets. For new sources obtaining permits by applying offsets after January 16, 1979, the Department may allow offsets that exceed the requirement of reasonable progress toward attainment to be "banked" (i.e., saved to provide offsets for a source seeking a permit in the future) for future use. Likewise, the

Department may allow the owner of an existing source that reduces its own emissions to bank any resulting reductions beyond those required by the State Implementation Plan for future use.

(J) [Reserved]

(K) [Reserved]

(L) Source obligation.

(1) Any owner or operator who constructs or operates a source or modification not in accordance with the application submitted pursuant to this section or with the terms of any approval to construct, or any owner or operator of a source or modification subject to this section who commences construction after the effective date of these regulations without applying for and receiving approval hereunder, shall be subject to appropriate enforcement action.

(2) Approval to construct shall become invalid if construction is not commenced within eighteen (18) months after receipt of such approval, if construction is discontinued for a period of eighteen (18) months or more, or if construction is not completed within a reasonable time. The Department may extend the eighteen (18)-month period upon a satisfactory showing that an extension is justified. This provision does not apply to the time period between construction of the approved phases of a phased construction project; each phase must commence construction within eighteen (18) months of the projected and approved commencement date.

(3) Approval to construct shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the State Implementation Plan and any other requirements under local, state, or federal law.

(4) At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforcement limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of regulations approved pursuant to this section shall apply to the source or modification as though construction had not yet commenced on the source or modification;

(5) Monitoring, Recordkeeping, and Reporting. The following provisions apply with respect to any regulated NSR pollutant emitted from projects at existing emissions units at a major stationary source (other than projects at a source with a PAL) in circumstances where there is a reasonable possibility that a project that is not a part of a major modification may result in a significant emissions increase of such pollutant, and the owner or operator elects to use the method specified in paragraphs (B)(31)(b)(i) through (B)(31)(b)(iii) for calculating projected actual emissions.

(a) If the project requires construction permitting under Regulation 61-62.1, Section II "Permit Requirements," the owner or operator shall provide a copy of the information set out in paragraph (L)(5)(b) as part of the permit application to the Department. If construction permitting under Regulation 61-62.1, Section II "Permit Requirements," is not required, the owner or operator shall maintain the information set out in paragraph (L)(5).

(b) Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information:

(i) A description of the project;

(ii) Identification of the emissions unit(s) whose emissions of a regulated NSR pollutant could be affected by the project; and

(iii) A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under paragraph (B)(31)(b)(iii) and an explanation for why such amount was excluded, and any netting calculations, if applicable.

(c) If the emissions unit is an existing electric utility steam generating unit, before beginning actual construction, the owner or operator shall provide a copy of the information set out in paragraph (L)(5)(b) to the reviewing authority. Nothing in this paragraph shall be construed to require the owner or operator of such a unit to obtain any determination from the reviewing authority before beginning actual construction.

(d) The owner or operator shall monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions units identified in paragraph (L)(5)(b)(ii); and calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of five (5) years following resumption of regular operations after the change, or for a period of ten (10) years following resumption of regular operations after the change if the project increases the design capacity or potential to emit of that regulated NSR pollutant at such emissions unit.

(e) If the unit is an existing electric utility steam generating unit, the owner or operator shall submit a report to the Department within sixty (60) days after the end of each year during which records must be generated under paragraph (L)(5)(b) setting out the unit's annual emissions during the year that preceded submission of the report.

(f) If the unit is an existing unit other than an electric utility steam generating unit, the owner or operator shall submit a report to the Department if the annual emissions, in tons per year, from the project identified in paragraph (L)(5)(b), exceed the baseline actual emissions (as documented and maintained pursuant to paragraph (L)(5)(b)(iii), by a significant amount (as defined in paragraph (B)(37)) for that regulated NSR pollutant, and if such emissions differ from the preconstruction projection as documented and maintained pursuant to paragraph (L)(5)(b)(iii). Such report shall be submitted to the Department within sixty (60) days after the end of such year. The report shall contain the following:

(i) The name, address and telephone number of the major stationary source;

(ii) The annual emissions as calculated pursuant to paragraph (L)(5)(d); and

(iii) Any other information needed to make a compliance determination (for example, an explanation as to why the emissions differ from the preconstruction projection).

(6) A "reasonable possibility" under paragraph (L)(5) occurs when the owner or operator calculates the project to result in either:

(a) A projected actual emissions increase of at least fifty (50) percent of the amount that is a "significant emissions increase," as defined under paragraph (B)(38) (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant; or

(b) A projected actual emissions increase that, added to the amount of emissions excluded under paragraph (B)(31)(b)(iii), sums to at least fifty (50) percent of the amount that is a "significant emissions increase," as defined under paragraph (B)(38) (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant. For a project for which a reasonable possibility occurs only within the meaning of this paragraph, and not also within the meaning of paragraph (L)(6)(a), then provisions (L)(5)(c) through (L)(5)(f) do not apply to the project.

(7) The owner or operator of the source shall make the information required to be documented and maintained pursuant to paragraph (L)(5) for review upon a request for inspection by the Department or the general public pursuant to the requirements contained in 40 CFR 70.4(b)(3)(viii).

(M) Public participation.

(1) Within thirty (30) days after receipt of an application to construct, or any addition to such application, the Department shall advise the applicant of any deficiency in the application or in the information submitted and transmit a copy of such application to EPA. In the event of such a deficiency, the date of receipt of the application shall be, for the purpose of this regulation, the date on which the Department received all required information.

(2) In accordance with Regulation 61-30, Environmental Protection Fees, the Department shall make a final determination on the application. This involves performing the following actions in a timely manner:

(a) For the purposes of this section, the time frame for making a final determination shall be consistent with Regulation 61-30, Environmental Protection Fees, paragraph (H)(2)(c)(iii).

(b) Make a preliminary determination whether construction should be approved, approved with conditions, or disapproved.

(c) Make available in at least one location in each region in which the proposed facility or modification would be constructed a copy of all materials the applicant submitted, a copy of the preliminary determination and a copy or summary of other materials, if any, considered in making the preliminary determination. This requirement may be met by making these materials available at a physical location or on a public website identified by the Department.

(d) Notify the public, by posting the notice, for the duration of the public comment period, on a public website identified by the Department. This consistent noticing method shall be used for all draft permits subject to notice under this section. The public website notice shall include a notice of public comment including notice of the application, the preliminary determination, the degree of increment consumption that is expected from the source or modification, and the opportunity for comment at a public hearing as well as written public comment. The public website notice shall also include the draft permit, information on how to access the administrative record for the draft permit, and how to request and/or attend a public hearing on the draft permit. The Department may use additional means to provide adequate notice to the affected public, including by publishing the notice in a newspaper of general circulation in each region in which the proposed source or modification would be constructed (or in a state publication designed to give general public notice).

(e) Send a copy of the notice of public comment to the applicant, the Administrator of EPA, and to officials and agencies having cognizance over the location where the proposed construction would occur as follows: The chief executives of the city and county where the facility or modification would be located, any comprehensive regional land use planning agency and any State, Federal Land Manager, or Indian Governing Body whose lands may be affected by emissions from the facility or modification.

(f) Provide opportunity for a public hearing for interested persons to appear and submit written or oral comments on the air quality impact of the facility or modification, alternatives to the facility or modification, the control technology required, and other appropriate considerations.

(g) Consider all written comments submitted within a time specified in the notice of public comment and all comments received at any public hearing(s) in making a final decision on the approvability of the application. No later than ten (10) days after the close of the public comment period, the applicant may submit a written response to any comments submitted by the public. The Department shall consider the applicant’s response in making a final decision. The Department shall make all comments available for public inspection in the same

location or on the same website where the Department made available preconstruction information relating to the proposed facility or modification.

(h) Make a final determination whether construction should be approved, approved with conditions, or disapproved pursuant to this section.

(i) Notify the applicant in writing of the final determination and make such notification available for public inspection at the same location or on the same website where the Department made available preconstruction information and public comments relating to the facility or modification.

(j) Notify EPA of every action related to the consideration of the permit.

(N) Actuals PALs. The provisions in paragraphs (N)(1) through (N)(15) govern actuals PALs.

(1) Applicability.

(a) The Department may approve the use of an actuals PAL for any existing major stationary source (except as provided in paragraph (N)(1)(b)) if the PAL meets the requirements in paragraphs (N)(1) through (N)(15). The term "PAL" shall mean "actuals PAL" throughout Section (N).

(b) The Department shall not allow an actuals PAL for VOC or NO_X for any major stationary source located in an extreme ozone nonattainment area.

(c) Any physical change in or change in the method of operation of a major stationary source that maintains its total source-wide emissions below the PAL level, meets the requirements in paragraphs (N)(1) through (N)(15), and complies with the PAL permit:

(i) Is not a major modification for the PAL pollutant;

(ii) Does not have to be approved through Regulation 61-62.5, Standard 7.1, “Nonattainment New Source Review”; however, will be reviewed through Regulation 61-62.1, Section II, “Permit Requirements,” and

(iii) Is not subject to the provisions in paragraph (L)(4) (restrictions on relaxing enforceable emission limitations that the major stationary source used to avoid applicability of the nonattainment major NSR program).

(d) Except as provided under paragraph (N)(1)(c)(iii), a major stationary source shall continue to comply with all applicable federal or state requirements, emission limitations, and work practice requirements that were established prior to the effective date of the PAL.

(2) Definitions. The definitions in paragraphs (N)(2)(a) through (N)(2)(k) shall apply to actuals PALs consistent with paragraphs (N)(1) through (N)(15). When a term is not defined in these paragraphs, it shall have the meaning given in Section (B) of this regulation; or in the Clean Air Act.

(a) **Actuals PAL** for a major stationary source means a PAL based on the baseline actual emissions (as defined in paragraph (B)(3)) of all emissions units (as defined in paragraph (B)(16) of this regulation) at the source, that emit or have the potential to emit the PAL pollutant.

(b) **Allowable emissions** means "allowable emissions" as defined in paragraph (B)(2) of this regulation, except as this definition is modified according to paragraphs (N)(2)(b)(i) through (N)(2)(b)(ii).

(i) The allowable emissions for any emissions unit shall be calculated considering any emission limitations that are enforceable as a practical matter on the emissions unit’s potential to emit.

(ii) An emissions unit's potential to emit shall be determined using the definition in paragraph (B)(27), except that the words "or enforceable as a practical matter" should be added after "federally enforceable."

(c) **Small emissions unit** means an emissions unit that emits or has the potential to emit the PAL pollutant in an amount less than the significant level for that PAL pollutant, as defined in paragraph (B)(37) or in the Clean Air Act, whichever is lower.

(d) **Major emissions unit** means:

(i) Any emissions unit that emits or has the potential to emit one-hundred (100) tons per year or more of the PAL pollutant in an attainment area; or

(ii) Any emissions unit that emits or has the potential to emit the PAL pollutant in an amount that is equal to or greater than the major source threshold for the PAL pollutant as defined by the Clean Air Act for nonattainment areas. For example, in accordance with the definition of major stationary source in Section 182(c) of the Clean Air Act, an emissions unit would be a major emissions unit for VOC if the emissions unit is located in a serious ozone nonattainment area and it emits or has the potential to emit fifty (50) or more tons of VOC per year.

(e) **Plantwide applicability limitation (PAL)** means an emission limitation expressed in tons per year, for a pollutant at a major stationary source, that is enforceable as a practical matter and established source-wide in accordance with paragraphs (N)(1) through (N)(15).

(f) **PAL effective date** generally means the date of issuance of the PAL permit. However, the PAL effective date for an increased PAL is the date any emissions unit which is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

(g) **PAL effective period** means the period beginning with the PAL effective date and ending ten (10) years later.

(h) **PAL major modification** means, notwithstanding paragraphs (B)(21) and (B)(24) (the definitions for major modification and net emissions increase), any physical change in or change in the method of operation of the PAL source that causes it to emit the PAL pollutant at a level equal to or greater than the PAL.

(i) **PAL permit** means the major NSR permit, the minor NSR permit, or the State operating permit under Regulation 61-62.1 Section II(G), or the Title V permit issued by the Department that establishes a PAL for a major stationary source.

(j) **PAL pollutant** means the pollutant for which a PAL is established at a major stationary source.

(k) **Significant emissions unit** means an emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is equal to or greater than the significant level (as defined in paragraph (B)(37) or in the Clean Air Act, whichever is lower) for that PAL pollutant, but less than the amount that would qualify the unit as a major emissions unit as defined in paragraph (N)(2)(d).

(3) Permit application requirements. As part of a permit application requesting a PAL, the owner or operator of a major stationary source shall submit the following information to the Department for approval:

(a) A list of all emissions units at the source designated as small, significant, or major based on their potential to emit. In addition, the owner or operator of the source shall indicate which, if any, Federal or State applicable requirements, emission limitations or work practices apply to each unit.

(b) Calculations of the baseline actual emissions (with supporting documentation). Baseline actual emissions are to include emissions associated not only with operation of the unit, but also emissions associated with startup, shutdown, and malfunction.

(c) The calculation procedures that the major stationary source owner or operator proposes to use to convert the monitoring system data to monthly emissions and annual emissions based on a twelve (12) month rolling total for each month as required by paragraph (N)(13)(a).

(4) General requirements for establishing PALs.

(a) The Department is allowed to establish a PAL at a major stationary source, provided that at a minimum, the requirements in paragraphs (N)(4)(a)(i) through (N)(4)(a)(vii) are met.

(i) The PAL shall impose an annual emission limitation in tons per year that is enforceable as a practical matter, for the entire major stationary source. For each month during the PAL effective period after the first twelve (12) months of establishing a PAL, the major stationary source owner or operator shall show that the sum of the monthly emissions from each emissions unit under the PAL for the previous twelve (12) consecutive months is less than the PAL (a twelve (12) month average, rolled monthly). For each month during the first eleven (11) months from the PAL effective date, the major stationary source owner or operator shall show that the sum of the preceding monthly emissions from the PAL effective date for each emissions unit under the PAL is less than the PAL.

(ii) The PAL shall be established in a PAL permit that meets the public participation requirements in paragraph (N)(5).

(iii) The PAL permit shall contain all the requirements of paragraph (N)(7).

(iv) The PAL shall include fugitive emissions, to the extent quantifiable, from all emissions units that emit or have the potential to emit the PAL pollutant at the major stationary source.

(v) Each PAL shall regulate emissions of only one pollutant.

(vi) Each PAL shall have a PAL effective period of ten (10) years.

(vii) The owner or operator of the major stationary source with a PAL shall comply with the monitoring, recordkeeping, and reporting requirements provided in paragraphs (N)(12) through (N)(14) for each emissions unit under the PAL through the PAL effective period.

(b) At no time (during or after the PAL effective period) are emissions reductions of a PAL pollutant, which occur during the PAL effective period, creditable as decreases for purposes of offsets under Section (D) Offset standards unless the level of the PAL is reduced by the amount of such emissions reductions and such reductions would be creditable in the absence of the PAL.

(5) Public participation requirement for PALs. PALs for existing major stationary sources shall be established, renewed, or increased through a procedure that is consistent with Section M. This includes the requirement that the Department provide the public with notice of the proposed approval of a PAL permit and at least a thirty (30)-day period for submittal of public comment. The Department must address all material comments before taking final action on the permit.

(6) Setting the 10-year actuals PAL level.

(a) Except as provided in paragraph (N)(6)(b), the actuals PAL level for a major stationary source shall be established as the sum of the baseline actual emissions (as defined in paragraph (B)(3)) of the PAL pollutant for

each emissions unit at the source; plus an amount equal to the applicable significant level for the PAL pollutant under paragraph (B)(37) or under the Clean Air Act, whichever is lower. When establishing the actuals PAL level, for a PAL pollutant, only one consecutive twenty-four (24)-month period must be used to determine the baseline actual emissions for all existing emissions units. However, a different consecutive twenty-four (24)-month period may be used for each different PAL pollutant. Emissions associated with units that were permanently shut down after this twenty-four (24)-month period must be subtracted from the PAL level. The Department shall specify a reduced PAL level(s) in tons per year in the PAL permit to become effective on the future compliance date(s) of any applicable federal or state regulatory requirement(s) that the Department is aware of prior to issuance of the PAL permit. For instance, if the source owner or operator will be required to reduce emissions from industrial boilers in half from baseline emissions of sixty (60) ppm NO_X to a new rule limit of thirty (30) ppm, then the permit shall contain a future effective PAL level that is equal to the current PAL level reduced by half of the original baseline emissions of such unit(s).

(b) For newly constructed units (which do not include modifications to existing units) on which actual construction began after the twenty-four (24)-month period the emissions must be added to the PAL level in an amount equal to the potential to emit of the units.

(7) Contents of the PAL permit. The PAL permit must contain, at a minimum, the information in paragraphs (N)(7)(a) through (N)(7)(j).

(a) The PAL pollutant and the applicable source-wide emission limitation in tons per year.

(b) The PAL permit effective date and the expiration date of the PAL (PAL effective period).

(c) Specification in the PAL permit that if a major stationary source owner or operator applies to renew a PAL in accordance with paragraph (N)(10) before the end of the PAL effective period, then the PAL shall not expire at the end of the PAL effective period. It shall remain in effect until a revised PAL permit is issued by the Department.

(d) A requirement that emission calculations for compliance purposes include emissions from startups, shutdowns, and malfunctions.

(e) A requirement that, once the PAL expires, the major stationary source is subject to the requirements of paragraph (N)(9).

(f) The calculation procedures that the major stationary source owner or operator shall use to convert the monitoring system data to monthly emissions and annual emissions based on a twelve (12) month rolling total for each month as required by paragraph (N)(13)(a).

(g) A requirement that the major stationary source owner or operator monitor all emissions units in accordance with the provisions under paragraph (N)(12).

(h) A requirement to retain the records required under paragraph (N)(13) on site. Such records may be retained in an electronic format.

(i) A requirement to submit the reports required under paragraph (N)(14) by the required deadlines.

(j) Any other requirements that the Department deems necessary to implement and enforce the PAL.

(8) PAL effective period and reopening of the PAL permit. The requirements in paragraphs (N)(8)(a) and (N)(8)(b) apply to actuals PALs.

(a) **PAL effective period**. The Department shall specify a PAL effective period of ten (10) years.

(b) **Reopening of the PAL permit**.

(i) During the PAL effective period, the Department must reopen the PAL permit to:

(1) Correct typographical/calculation errors made in setting the PAL or reflect a more accurate determination of emissions used to establish the PAL.

(2) Reduce the PAL if the owner or operator of the major stationary source creates creditable emissions reductions for use as offsets under Section (D).

(3) Revise the PAL to reflect an increase in the PAL as provided under paragraph (N)(11).

(ii) The Department shall have discretion to reopen the PAL permit for the following:

(1) Reduce the PAL to reflect newly applicable federal requirements (for example, NSPS) with compliance dates after the PAL effective date.

(2) Reduce the PAL consistent with any other requirement, that is enforceable as a practical matter, and that the Department may impose on the major stationary source under the State Implementation Plan.

(3) Reduce the PAL if the Department determines that a reduction is necessary to avoid causing or contributing to a NAAQS or PSD increment violation, or to an adverse impact on an air quality related value that has been identified for a Federal Class I area by a Federal Land Manager and for which information is available to the general public.

(iii) Except for the permit reopening in paragraph (N)(8)(b)(i)(1) for the correction of typographical/calculation errors that do not increase the PAL level, all other reopenings shall be carried out in accordance with the public participation requirements of paragraph (N)(5).

(9) Expiration of a PAL. Any PAL which is not renewed in accordance with the procedures in paragraph (N)(10) shall expire at the end of the PAL effective period, and the requirements in paragraphs (N)(9)(a) through (N)(9)(e) shall apply.

(a) Each emissions unit (or each group of emissions units) that existed under the PAL shall comply with an allowable emission limitation under a revised permit established according to the procedures in paragraphs (N)(9)(a)(i) through (N)(9)(a)(ii).

(i) Within the time frame specified for PAL renewals in paragraph (N)(10)(b), the major stationary source shall submit a proposed allowable emission limitation for each emissions unit (or each group of emissions units, if such a distribution is more appropriate as decided by the Department) by distributing the PAL allowable emissions for the major stationary source among each of the emissions units that existed under the PAL. If the PAL had not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as required under paragraph (N)(10)(e), such distribution shall be made as if the PAL had been adjusted.

(ii) The Department shall decide whether and how the PAL allowable emissions will be distributed and issue a revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as the Department determines is appropriate.

(b) Each emissions unit(s) shall comply with the allowable emission limitation on a twelve (12) month rolling basis. The Department may approve the use of monitoring systems (source testing, emission factors, etc.) other than Continuous Emissions Monitoring System (CEMS), Continuous Emissions Rate Monitoring System (CERMS), Predictive Emissions Monitoring System (PEMS), or Continuous Parameter Monitoring System (CPMS) to demonstrate compliance with the allowable emission limitation.

(c) Until the Department issues the revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as required under paragraph (N)(9)(a)(i), the source shall continue to comply with a source-wide, multi-unit emissions cap equivalent to the level of the PAL emission limitation.

(d) Any physical change or change in the method of operation at the major stationary source will be subject to the nonattainment major NSR requirements if such change meets the definition of major modification in paragraph (B)(21).

(e) The major stationary source owner or operator shall continue to comply with any State or Federal applicable requirements (BACT, RACT, NSPS, etc.) that may have applied either during the PAL effective period or prior to the PAL effective period except for those emission limitations that had been established pursuant to paragraph (L)(4), but were eliminated by the PAL in accordance with the provisions in paragraph (N)(1)(c)(iii).

(10) Renewal of a PAL.

(a) The Department shall follow the procedures specified in paragraph (N)(5) in approving any request to renew a PAL for a major stationary source, and shall provide both the proposed PAL level and a written rationale for the proposed PAL level to the public for review and comment. During such public review, any person may propose a PAL level for the source for consideration by the Department.

(b) **Application deadline**. A major stationary source owner or operator shall submit a timely application to the Department to request renewal of a PAL. A timely application is one that is submitted at least six (6) months prior to, but not earlier than eighteen (18) months from, the date of permit expiration. This deadline for application submittal is to ensure that the permit will not expire before the permit is renewed. If the owner or operator of a major stationary source submits a complete application to renew the PAL within this time period, then the PAL shall continue to be effective until the revised permit with the renewed PAL is issued.

(c) **Application requirements**. The application to renew a PAL permit shall contain the information required in paragraphs (N)(10)(c)(i) through (N)(10)(c)(iv).

(i) The information required in paragraphs (N)(3)(a) through (N)(3)(c).

(ii) A proposed PAL level.

(iii) The sum of the potential to emit of all emissions units under the PAL (with supporting documentation).

(iv) Any other information the owner or operator wishes the Department to consider in determining the appropriate level for renewing the PAL.

(d) **PAL adjustment**. In determining whether and how to adjust the PAL, the Department shall consider the options outlined in paragraphs (N)(10)(d)(i) and (N)(10)(d)(ii). However, in no case may any such adjustment fail to comply with paragraph (N)(10)(d)(iii).

(i) If the emissions level calculated in accordance with paragraph (N)(6) is equal to or greater than eighty (80) percent of the PAL level, the Department may renew the PAL at the same level without considering the factors set forth in paragraph (N)(10)(d)(ii); or

(ii) The Department may set the PAL at a level that it determines to be more representative of the source's baseline actual emissions, or that it determines to be appropriate considering air quality needs, advances in control technology, anticipated economic growth in the area, desire to reward or encourage the source's

voluntary emissions reductions, or other factors as specifically identified by the Department in its written rationale.

(iii) Notwithstanding paragraphs (N)(10)(d)(i) and (N)(10)(d)(ii),

(1) If the potential to emit of the major stationary source is less than the PAL, the Department shall adjust the PAL to a level no greater than the potential to emit of the source; and

(2) The Department shall not approve a renewed PAL level higher than the current PAL, unless the major stationary source has complied with the provisions of paragraph (N)(11) (increasing a PAL).

(e) If the compliance date for a state or federal requirement that applies to the PAL source occurs during the PAL effective period, and if the Department has not already adjusted for such requirement, the PAL shall be adjusted at the time of PAL permit renewal or Title V permit renewal, whichever occurs first.

(11) Increasing a PAL during the PAL effective period.

(a) The Department may increase a PAL emission limitation only if the major stationary source complies with the provisions in paragraphs (N)(11)(a)(i) through (N)(11)(a)(iv).

(i) The owner or operator of the major stationary source shall submit a complete application to request an increase in the PAL limit for a PAL major modification. Such application shall identify the emissions unit(s) contributing to the increase in emissions so as to cause the major stationary source's emissions to equal or exceed its PAL.

(ii) As part of this application, the major stationary source owner or operator shall demonstrate that the sum of the baseline actual emissions of the small emissions units, plus the sum of the baseline actual emissions of the significant and major emissions units assuming application of BACT equivalent controls, plus the sum of the allowable emissions of the new or modified emissions unit(s) exceeds the PAL. The level of control that would result from BACT equivalent controls on each significant or major emissions unit shall be determined by conducting a new BACT analysis at the time the application is submitted, unless the emissions unit is currently required to comply with a BACT or LAER requirement that was established within the preceding ten (10) years. In such a case, the assumed control level for that emissions unit shall be equal to the level of BACT or LAER with which that emissions unit must currently comply.

(iii) The owner or operator obtains a major NSR permit for all emissions unit(s) identified in paragraph (N)(11)(a)(i), regardless of the magnitude of the emissions increase resulting from them (that is, no significant levels apply). These emissions unit(s) shall comply with any emissions requirements resulting from the nonattainment major NSR program process (for example, LAER), even though they have also become subject to the PAL or continue to be subject to the PAL.

(iv) The PAL permit shall require that the increased PAL level shall be effective on the day any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

(b) The Department shall calculate the new PAL as the sum of the allowable emissions for each modified or new emissions unit, plus the sum of the baseline actual emissions of the significant and major emissions units (assuming application of BACT equivalent controls as determined in accordance with paragraph (N)(11)(a)(ii)), plus the sum of the baseline actual emissions of the small emissions units.

(c) The PAL permit shall be revised to reflect the increased PAL level pursuant to the public notice requirements of paragraph (N)(5).

(12) Monitoring requirements for PALs.

(a) General Requirements.

(i) Each PAL permit must contain enforceable requirements for the monitoring system that accurately determines plantwide emissions of the PAL pollutant in terms of mass per unit of time. Any monitoring system authorized for use in the PAL permit must be based on sound science and meet generally acceptable scientific procedures for data quality and manipulation. Additionally, the information generated by such system must meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL permit.

(ii) The PAL monitoring system must employ one or more of the four general monitoring approaches meeting the minimum requirements set forth in paragraphs (N)(12)(b)(i) through (N)(12)(b)(iv) and must be approved by the Department.

(iii) Notwithstanding paragraph (N)(12)(a)(ii), you may also employ an alternative monitoring approach that meets paragraph (N)(12)(a)(i) if approved by the Department.

(iv) Failure to use a monitoring system that meets the requirements of this regulation renders the PAL invalid.

(b) Minimum Performance Requirements for Approved Monitoring Approaches. The following are acceptable general monitoring approaches when conducted in accordance with the minimum requirements in paragraphs (N)(12)(c) through (N)(12)(i):

(i) Mass balance calculations for activities using coatings or solvents;

(ii) Continuous emissions monitoring system (CEMS);

(iii) Continuous parameter monitoring system (CPMS) or Predictive emissions monitoring system (PEMS); and

(iv) Emission Factors.

(c) Mass Balance Calculations. An owner or operator using mass balance calculations to monitor PAL pollutant emissions from activities using coating or solvents shall meet the following requirements:

(i) Provide a demonstrated means of validating the published content of the PAL pollutant that is contained in or created by all materials used in or at the emissions unit;

(ii) Assume that the emissions unit emits all of the PAL pollutant that is contained in or created by any raw material or fuel used in or at the emissions unit, if it cannot otherwise be accounted for in the process; and

(iii) Where the vendor of a material or fuel, which is used in or at the emissions unit, publishes a range of pollutant content from such material, the owner or operator must use the highest value of the range to calculate the PAL pollutant emissions unless the Department determines there is site-specific data or a site-specific monitoring program to support another content within the range.

(d) CEMS. An owner or operator using CEMS to monitor PAL pollutant emissions shall meet the following requirements:

(i) CEMS must comply with applicable Performance Specifications found in 40 CFR Part 60, Appendix B; and

(ii) CEMS must sample, analyze and record data at least every fifteen (15) minutes while the emissions unit is operating.

(e) CPMS or PEMS. An owner or operator using CPMS or PEMS to monitor PAL pollutant emissions shall meet the following requirements:

(i) The CPMS or the PEMS must be based on current site-specific data demonstrating a correlation between the monitored parameter(s) and the PAL pollutant emissions across the range of operation of the emissions unit; and

(ii) Each CPMS or PEMS must sample, analyze, and record data at least every fifteen (15) minutes, or at another less frequent interval approved by the Department, while the emissions unit is operating.

(f) Emission factors. An owner or operator using emission factors to monitor PAL pollutant emissions shall meet the following requirements:

(i) All emission factors shall be adjusted, if appropriate, to account for the degree of uncertainty or limitations in the factors' development;

(ii) The emissions unit shall operate within the designated range of use for the emission factor, if applicable; and

(iii) If technically practicable, the owner or operator of a significant emissions unit that relies on an emission factor to calculate PAL pollutant emissions shall conduct validation testing to determine a site-specific emission factor within six (6) months of PAL permit issuance, unless the Department determines that testing is not required.

(g) A source owner or operator must record and report maximum potential emissions without considering enforceable emission limitations or operational restrictions for an emissions unit during any period of time that there is no monitoring data, unless another method for determining emissions during such periods is specified in the PAL permit.

(h) Notwithstanding the requirements in paragraphs (N)(12)(c) through (N)(12)(g), where an owner or operator of an emissions unit cannot demonstrate a correlation between the monitored parameter(s) and the PAL pollutant emissions rate at all operating points of the emissions unit, the Department shall, at the time of permit issuance:

(i) Establish default value(s) for determining compliance with the PAL based on the highest potential emissions reasonably estimated at such operating point(s); or

(ii) Determine that operation of the emissions unit during operating conditions when there is no correlation between monitored parameter(s) and the PAL pollutant emissions is a violation of the PAL.

(i) Re-validation. All data used to establish the PAL pollutant must be re-validated through performance testing or other scientifically valid means approved by the Department. Such testing must occur at least once every five (5) years after issuance of the PAL.

(13) Recordkeeping requirements.

(a) The PAL permit shall require an owner or operator to retain a copy of all records necessary to determine compliance with any requirement of Section (N) and of the PAL, including a determination of each emissions unit's twelve (12) month rolling total emissions, for five (5) years from the date of such record.

(b) The PAL permit shall require an owner or operator to retain a copy of the following records for the duration of the PAL effective period plus five (5) years:

(i) A copy of the PAL permit application and any applications for revisions to the PAL; and

(ii) Each annual certification of compliance pursuant to Title V and the data relied on in certifying the compliance.

(14) Reporting and notification requirements. The owner or operator shall submit semi-annual monitoring reports and prompt deviation reports to the Department in accordance with the applicable Title V operating permit program. The reports shall meet the requirements in paragraphs (N)(14)(a) through (N)(14)(c).

(a) Semi-Annual Report. The semi-annual report shall be submitted to the Department within thirty (30) days of the end of each reporting period. This report shall contain the information required in paragraphs (N)(14)(a)(i) through (N)(14)(a)(vii).

(i) The identification of owner and operator and the permit number.

(ii) Total annual emissions tons per year based on a twelve (12) month rolling total for each month in the reporting period recorded pursuant to paragraph (N)(13)(a).

(iii) All data relied upon, including, but not limited to, any Quality Assurance or Quality Control data, in calculating the monthly and annual PAL pollutant emissions.

(iv) A list of any emissions units modified or added to the major stationary source during the preceding six (6)-month period.

(v) The number, duration, and cause of any deviations or monitoring malfunctions (other than the time associated with zero and span calibration checks), and any corrective action taken.

(vi) A notification of a shutdown of any monitoring system, whether the shutdown was permanent or temporary, the reason for the shutdown, the anticipated date that the monitoring system will be fully operational or replaced with another monitoring system, and whether the emissions unit monitored by the monitoring system continued to operate, and the calculation of the emissions of the pollutant or the number determined by method included in the permit, as provided by paragraph (N)(12)(g).

(vii) A signed statement by the responsible official (as defined by Regulation 61-62.70) certifying the truth, accuracy, and completeness of the information provided in the report.

(b) Deviation report. The major stationary source owner or operator shall promptly submit reports of any deviations or exceedance of the PAL requirements, including periods where no monitoring is available. A report submitted pursuant to 40 CFR 70.6(a)(3)(iii)(B) shall satisfy this reporting requirement. The deviation reports shall be submitted within the time limits prescribed by the applicable program implementing 40 CFR 70.6(a)(3)(iii)(B). The reports shall contain the following information:

(i) The identification of owner and operator and the permit number;

(ii) The PAL requirement that experienced the deviation or that was exceeded;

(iii) Emissions resulting from the deviation or the exceedance; and

(iv) A signed statement by the responsible official (as defined by Regulation 61-62.70) certifying the truth, accuracy, and completeness of the information provided in the report.

(c) Re-validation results. The owner or operator shall submit to the Department the results of any re-validation test or method within three (3) months after completion of such test or method.

(15) Transition requirements.

(a) The Department may not issue a PAL that does not comply with the requirements in paragraphs (N)(1) through (N)(15) after the date these provisions become effective.

(b) The Department may supersede any PAL which was established prior to the date of approval of the plan by the Administrator with a PAL that complies with the requirements of paragraphs (N)(1) through (N)(15).

(O) If any provision of this regulation, or the application of such provision to any person or circumstance, is held invalid, the remainder of this regulation, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

61-62.70. Title V Operating Permit Program.

Regulation 61-62.70.7 (h)(1), shall be revised as follows:

(1) Notice shall be given by posting the notice and the draft permit, for the duration of the public comment period, on a public website identified by the Department, as the consistent noticing method. This consistent noticing method shall be used for all draft permits subject to notice under this paragraph. In addition, notice shall be given to persons on a mailing list developed by the Department using generally accepted methods (e.g., hyperlink sign-up function or radio button on an agency website, sign-up sheet at a public hearing, etc.) that enable interested parties to subscribe to the mailing list. The Department may update the mailing list from time to time by requesting written indication of continued interest from those listed. The Department may delete from the list the name of any person who fails to respond to such a request within a reasonable timeframe. The Department may use additional means to provide adequate notice to the affected public, including by publishing the notice in a newspaper of general circulation in the area where the source is located (or in a State publication designed to give general public notice);

Fiscal Impact Statement:

There is no anticipated increased cost to the state or its political subdivisions resulting from this revision. Amendments to Regulation 61-62, Air Pollution Control Regulations and Standards, and the SIP include revisions that will help streamline state requirements and therefore reduce economic burden.

Statement of Need and Reasonableness:

This Statement of Need and Reasonableness was determined by staff analysis pursuant to 1976 Code Sections 1-23-115(C)(1)-(3) and (9)-(11).

DESCRIPTION OF REGULATION: Amendment of Regulation 61-62, Air Pollution Control Regulations and Standards, and the South Carolina State Implementation Plan ("SIP").

Purpose: The amendments to Regulation 61-62, Air Pollution Control Regulations and Standards, support the Department's goal of promoting and protecting the health of the public and the environment in a more efficient and effective manner. These amendments expand and clarify definitions applicable to air pollution control regulations and standards; streamline permitting options; clarify reporting requirements; identify the Department's consistent noticing method; improve the regulations' organizational structure; and provide corrections for consistency, clarification, reference, punctuation, codification, formatting, and spelling to improve the overall text of Regulation 61-62.

Legal Authority: 1976 Code Sections 48-1-10 et seq.

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

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

Pursuant to the federal CAA and the South Carolina Pollution Control Act the Department is amending South Carolina Regulation 61-62, Air Pollution Control Regulations and Standards, and SIP as follows:

1. R.61-62.1, Definitions and General Requirements, Section II, Permit Requirements, to expand and improve consistency in language regarding general and registration permits,

2. The introductory paragraph to R.61-62.5, Standard No. 2, Ambient Air Quality Standards, to remove the sentence describing the test method for Gaseous Fluorides to improve the accuracy and clarity of the regulation's text,

3. R.61-62.5, Standard No. 5.2, Control of Oxides of Nitrogen (NO_X), to update applicability and exemptions, as well as make corrections for internal consistency, punctuation, codification, and spelling,

4. R.61-62.5, Standard No. 7, Prevention of Significant Deterioration, to update applicability and exemptions, as well as make corrections for consistency with federal regulations, internal consistency, punctuation, codification, and spelling,

5. R.61-62.5, Standard No. 7.1, Nonattainment New Source Review (NSR), to improve the overall clarity and structure of the regulation, as well as to make corrections for consistency with federal regulations, internal consistency, punctuation, codification, and spelling,

6. R.61-62.1, Definitions and General Requirements; R.61-62.5, Standard No. 7, Prevention of Significant Deterioration; R.61-62.5, Standard No. 7.1, Nonattainment New Source Review (NSR); and R.61-62.70, Title V Operating Permit Program, to update public participation procedures, and

7. Definitional updates, clarification of certain permitting provisions, and other changes and additions deemed necessary, as well as corrections for internal consistency, clarification, reference, punctuation, codification, formatting, and spelling to improve the overall text of R.61-62 as necessary.

These amendments are needed, reasonable, and beneficial in that they simplify, clarify, and correct elements of the Department's air quality regulations to support the Department's goal of promoting and protecting the health of the public and the environment in a more efficient and effective manner.

DETERMINATION OF COSTS AND BENEFITS:

The Department does not anticipate an increase in costs to the state, its political subdivisions, or the regulated community resulting from these revisions. The amendments ensure consistency with Environmental Protection Agency ("EPA") regulations, which the Department implements pursuant to the authority granted by Section 48-1-50 of the Pollution Control Act. The amendments will benefit the regulated community by maintaining state implementation of the federal requirements, as opposed to federal implementation.

Amendments to Regulation 61-62, Air Pollution Control Regulations and Standards, and the SIP, will help streamline state requirements related to permitting and other matters to conform to current Prevention of Significant Deterioration, New Source Review, and the Title V Permit Program standards. These revisions may

potentially save money for the regulated community by providing clarification on exemptions, permitting, and other requirements, while continuing to ensure environmental protection.

UNCERTAINTIES OF ESTIMATES:

There are no uncertainties of estimates relative to the costs to the state or its political subdivisions. These revisions seek to provide clarity to the regulated community.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:

The amendments to Regulation 61-62, Air Pollution Control Regulations and Standards, seek to provide continued state-focused protection of the environment and public health.

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

The Department does not anticipate detrimental effect on the environment and/or public health associated with these revisions. To the contrary, the state's delegated authority to implement programs beneficial to public health and the environment may be compromised if these amendments are not adopted. Permit streamlining and regulatory text clarification seek to have a positive effect on both the environment and public health.

Statement of Rationale:

The Department is amending Regulation 61-62, Air Pollution Control Regulations and Standards, to support the goal of promoting and protecting the health of the public and the environment in a more efficient and effective manner. These amendments expand and clarify definitions applicable to air pollution control regulations and standards; streamline permitting options; clarify reporting requirements; identify the Department's consistent noticing method; improve the regulations' organizational structure; and provide corrections for consistency, clarification, reference, punctuation, codification, formatting, and spelling to improve the overall text of Regulation 61-62.