DEPARTMENT OF ENERGY AND ENVIRONMENT

NOTICE OF FINAL RULEMAKING

Chapters 1 and 2 of the Air Quality Regulations

The Director of the Department of Energy and Environment (DOEE or Department), pursuant to the authority set forth in Sections 5 and 6 of the District of Columbia Air Pollution Control Act of 1984 (the "Act"), effective March 15, 1985 (D.C. Law 5-165; D.C. Official Code §§ 8-101.01 *et seq*. (2013 Repl. & 2019 Supp.)); Section 107(4) of the District Department of the Environment Establishment Act of 2005, effective February 15, 2006 (D.C. Law 16-51; D.C. Official Code § 8-151.07(4) (2013 Repl.)); and Mayor's Order 2006-61, dated June 14, 2006, hereby gives notice of the adoption of the following amendments to Chapters 1 (Air Quality - General Rules) and 2 (Air Quality - General and Non-Attainment Area Permits), to Title 20 (Environment) of the District of Columbia Municipal Regulations (DCMR).

A Notice of Proposed Rulemaking was published in the *D.C. Register* for a thirty (30) day public notice and comment on February 3, 2017 at 64 DCR 001138. At the request of one commenter, the comment period was extended until March 24, 2017 by publication of notice on the DOEE website. The Department received five (5) sets of comments on this rulemaking, from the U.S. Environmental Protection Agency (EPA), Sierra Club, American Coatings Association (ACA), Consumer Specialty Products Association (CSPA), and Roof Coatings Manufacturers Association (RCMA).

EPA commented that there was a typographical error in the heading for the definition of "Standard Industrial Classification Code" under 20 DCMR § 199. The Department has corrected this error in this Final Rulemaking.

The Sierra Club submitted three (3) comments on this rulemaking. The first comment was that the proposed rulemaking undermined public participation in the agency decision-making process because it did not provide a rationale for the proposed changes. The Department notes that it extended the public comment period for this rulemaking in order to enhance public participation and that it otherwise met the requirements for rulemaking under the D.C. Administrative Procedure Act, therefore the Department did not make any changes in response to this comment. The second comment was that the Proposed Rule violated EPA's Start-Up Shut-Down and Malfunction State Implementation Plan Call (SSM SIP Call) (80 Fed. Reg. 33840 (June 12, 2015)), because the variance provision granted the agency unbounded discretion to allow sources to violate federal Clean Air Act requirements and the requirements on control devices and practices allowed them to remove devices in violation of their air quality permits. The Department has made two clarifying amendments in response to this comment: (1) the Department has clarified that the variance provision under Section 103 may not be used to excuse performance of any federally enforceable emission limitation or requirement; and (2) the Department has clarified that any source removing a control device pursuant to § 102 shall first obtain an amendment to its Chapter 2 permit, if applicable, but that they may shut down the control device without a permit amendment, provided that they have received approval from the Department. The third comment was that the Department failed to address requirements under

the SSM SIP Call to amend 20 DCMR § 606. The Department has declined to make any changes in response to this comment, as this rulemaking action was not intended to address all of the requirements of the SSM SIP Call.

ACA and RCAM each submitted one (1) comment on the rulemaking, and CSPA submitted three (3) comments. All three (3) commenters raised concerns with the proposed rulemaking's use of South Coast Air Quality Management District (SCAQMD) Method 313 as a test method under the definition of "volatile organic compound" in 20 DCMR § 199. The Department agreed with the commenters' concerns that this test method was not yet final and consequently has removed that reference in this Final Rulemaking. Additionally, ACA and CSPA raised concerns with the use of ASTM D6886 as a test method under the definition of "volatile organic compound". The Department did not accept this comment as it has determined that ASTM D6886 is still useful in some situations and because it has authority to approve an alternative test method where appropriate. CSPA additionally commented that the Department should consider adding California Air Resources Board (CARB) Method 310. The Department did not accept this comment because it did not accept public comments on the use of Method 310, however, notes that it may still approve this as an alternative test method pursuant to 20 DCMR § 502.3. Finally, CSPA commented favorably on the amendment to the definition of "volatile organic compound" to update the cross-reference to federal regulations.

For a detailed summary of the comments and responses, please see the Department's website at: https://doee.dc.gov/service/public-notices-hearings.

These rules were adopted as final on February 18, 2020 and will be effective upon publication of this notice in the *D.C. Register*.

Chapter 1, AIR QUALITY – GENERAL RULES, of Title 20 DCMR, ENVIRONMENT, is amended to read as follows:

Section 100, PURPOSE, SCOPE, AND CONSTRUCTION, is amended to read as follows:

100 PURPOSE, SCOPE, AND CONSTRUCTION

100.1 The purpose of the air quality regulations is to prevent or minimize emissions into the atmosphere and thereby protect and enhance the quality of the District's air resources so as to protect the public health and welfare, promote the productive capacity of the people of the District of Columbia, and protect and restore the natural environment of the District of Columbia.

100.2 The air quality regulations shall apply to all operations in the District as authorized by the District of Columbia Air Pollution Control Act of 1984 (D.C. Law 5-165), as amended, as well as federal operations to the full extent permitted by the Clean Air Act (42 USC §§ 7401 *et seq.*), as amended, and regulations promulgated thereunder.

100.3 All regulations and parts of regulations in effect in the District that are inconsistent with the provisions of the air quality regulations are superseded with respect to matters covered by the air quality regulations, unless specifically stated otherwise.

100.4 The English system of measurement shall be the official system of measurement under the air quality regulations, unless specified otherwise.

100.5 Reference in the air quality regulations to a specific introductory section or subsection (such as § 204 or § 204.1) is intended to include a reference to all subdivisions of the specific section or subsection (such as §§ 204.1, 204.2, 204.1(a), and 204.1(a)(1)).

100.6 If any provision of the air quality regulations or the application thereof to any person or circumstance, is held invalid by a court of competent jurisdiction, the validity of the remainder of the air quality regulations shall not be affected.

Section 101, INSPECTION, is repealed and replaced with the following:

101 CONFIDENTIALITY OF REPORTS

101.1 Any records, reports, information, or particulars thereof, other than emissions data, that relates to production, sales figures, or processes of any owner or operator, shall not be disclosed publicly upon a showing satisfactory to the Department that to publicly disclose will result in a significant and adverse effect upon the competitive position of the owner or operator, as provided in section 204 of the D.C. Freedom of Information Act (D.C. Official Code § 2-534) and Section 114 of the Clean Air Act (42 USC § 7414) except as may be necessary to protect the public health, safety, or well-being, following an opportunity for a hearing pursuant to § 107 of this title.

101.2 Subsection 101.1 of this title shall not be construed to prevent the use of the records, reports, or information by the Department in compiling or publishing analyses or summaries relating to the general condition of the outdoor atmosphere; provided, that the analyses or summaries do not reveal any information otherwise confidential under the provisions of this section.

101.3 Subsection 101.1 of this title shall not be construed to prevent such record, report, or information from being disclosed to other officers, employees, or authorized representatives of the District of Columbia or the United States concerned with carrying out this Act or the Clean Air Act, or when relevant in any proceeding under this Act or the Clean Air Act.

Section 102, ORDERS FOR COMPLIANCE, is repealed and replaced with the following:

102 CONTROL DEVICES OR PRACTICES

102.1 The devices or practices provided for the control of air pollutants discharged from stationary sources, or for otherwise complying with the air quality laws and regulations, shall remain operative or effective whenever the stationary source being controlled is operative or capable of producing emissions, except as otherwise provided in this section, and shall not be removed prior to the owner or operator requesting, and receiving, either written approval from the Department or an amendment to the source's operating permit issued pursuant to Chapter 2 of this title, as provided in §§ 102.4 and 102.6 of this title.

102.2 Whenever it is necessary to shut down air pollution control equipment due to malfunction or for periodic maintenance, the owner or operator of the equipment shall report the planned shutdown to the Department within one (1) business day of a shutdown due to malfunction, or at least forty-eight (48) hours prior to a shutdown for maintenance.

102.3 The notice required by § 102.2 of this title shall include, but is not limited to, the following:

(a) Identification of the specific facility whose pollution control equipment is to be taken out of service, as well as its location and permit number;

(b) The expected length of time that the air pollution control equipment will be out of service;

(c) The nature and quantity of emissions of air pollutants likely to occur during the shutdown period;

(d) Measures that will be taken to minimize the length of the shutdown period; and

(e) The reasons that it would be impossible or impractical to shut down the source operation during the maintenance or repair period.

102.4 The Department may, by written notice to the owner or operator, permit the continued operation of the source for the time period proposed, or for the lesser time as the Department finds reasonable, provided that:

(a) The owner or operator of the equipment provides the notice required in §§ 102.2 and 102.3 of this title;

(b) The Department determines that measures have been taken to minimize the length of the shutdown period;

(c) The Department determines that it would be impossible or impractical to shut down the source operation during the maintenance or repair period; and

(d) The Department determines that operation of the source will not result in the violation of any federally enforceable emissions limitation or requirement.

102.5 If the Department does not permit continued operation of the source pursuant to § 102.4 of this title, it may order the owner or operator to discontinue operation of the stationary source until the maintenance is completed, or the malfunctioning equipment is repaired.

102.6 The Department may, by written notice to the owner or operator, allow the removal of a control device or practice pursuant to § 102.1 provided that:

(a) The owner or operator submits a written request for removal of the control device or practice at least ninety (90) days prior to the proposed date of removal;

(b) The Department determines that it would be impossible or highly impractical to maintain the control device or practice;

(c) The Department determines that operation of the stationary source without the control device or practice will not result in the violation of any federally enforceable emissions limitation or regulatory requirement; and

(d) If the control device or practice is required by a permit issued pursuant to Chapters 2 or 3 of the air quality regulations, the owner or operator shall submit an application for an amendment to the permit at the same time or prior to the written request specified under paragraph (a) and may proceed with the requested change as follows:

(1) The owner or operator may cease operating a control device or performing a control practice upon receipt of written approval pursuant to this subsection; and

(2) The owner or operator may only remove a control device upon receipt of a permit amendment authorizing operation of the stationary source without the control device.

102.7 Any article, machine, equipment, device, or other contrivance that conceals an emission from any source shall not be installed or used.

Section 103, VARIANCE, is amended to read as follows:

103 VARIANCES

103.1 Each person required to perform an act by the air quality regulations may be excused by the Department from the performance of the act, either in whole or in part, upon a finding by the Department that the full performance of the act would result in exceptional or undue hardship by reason of excessive structural or mechanical difficulty, or the impracticability of bringing the activity into full compliance with the requirements of the air quality regulations.

103.2 A variance may be granted only to the extent that it is necessary to ameliorate an exceptional or undue hardship, and only when compensating factors are present that give adequate protection to the public health or welfare and assure that the intent and purpose of the air quality regulations are not impaired.

103.3 No variance may be granted to excuse performance required by any federally enforceable emissions limitation or requirement.

103.4 A person requesting a variance shall submit a written request for the variance, together with the supporting data and analyses that may be required by the Department.

103.5 The request for a variance shall be filed with the Department and shall include the following:

(a) The requirement(s) of the air quality regulations from which the person seeks the variance;

(b) A description of the exceptional or undue hardship that would result from compliance with the requirement; and

(c) A description of the act that the person wishes to perform in lieu of the regulatory requirement.

103.6 Except as explicitly provided in the air quality regulations, a variance is granted for the operation of diesel locomotives on common carrier railroads in the District in accordance with the Clean Air Act.

103.7 A variance may be granted for experimental and research activities; provided, that the requirements of §§ 103.1 through 103.5 are otherwise met.

103.8 All requests for variances shall be published in the *District of Columbia Register,* at least thirty (30) days before the Department rules on the request, in accordance with the following requirements:

(a) The published notice shall briefly set forth the information contained in the applicant's written request; and

(b) Any person may submit comments on the request within thirty (30) days of the published notice.

103.9 An applicant must submit the fee specified in § 211 of this title, sufficient to cover the reasonable costs of reviewing and acting upon the application and the reasonable costs of implementing and enforcing the terms and conditions of the variance approval.

103.10 The Department shall maintain a written record of all variances granted and denied. The record shall include all bases for the grant or denial, and shall be available for public inspection.

103.11 Each variance may be granted for up to five (5) years, but not to exceed the time necessary to avoid the undue hardship, and may be renewed in accordance with the following:

(a) A renewal may be granted only if the Department finds that the intent and purpose of the air quality regulations are not impaired;

(b) A renewal may be granted only upon application, which shall be made at least ninety (90) days prior to the expiration of the variance; and

(c) All of the requirements of this section shall apply in cases of renewal.

103.12 Nothing in this section shall be construed to permit any operation in violation of the air quality regulations during the pendency of a request for a variance.

103.13 Nothing in this section, and no variance or renewal granted pursuant to this section, shall be construed to prevent or limit the application of the emergency provisions and procedures of § 401 of this title to any person or his or her property.

Section 104, HEARINGS, is repealed and replaced with the following:

104 ENTRY AND INSPECTION

104.1 Upon the presentation of appropriate credentials to the owner, agent in charge, or tenant, the Department shall have the right, subject to § 104.3 of this section, to enter a premise or inspect an activity reasonably believed to be subject to the air quality regulations to determine compliance with the requirements of the air quality regulations. The right of entry shall be for the following purposes:

(a) Inspection, including the right to inspect and copy records related to compliance with the air quality regulations;

(b) Observation;

(c) Measurement;

(d) Sampling;

(e) Testing; and

(f) Evidence collection.

104.2 The Department may:

(a) Investigate and take testimony under oath regarding any report of noncompliance with a federal or District law or regulation applicable to air pollution control; and

(b) In addition to the requirements of Chapter 5 of Title 20 DCMR, require a person or entity subject to the air quality regulations, or who the Department reasonably believes may have information necessary to carry out the purposes of the air quality regulations, on a one-time, periodic, or continuous basis to:

(1) Establish, maintain, and submit records and reports;

(2) Install, use, and maintain monitoring equipment, and use audit procedures or methods;

(3) Take samples in accordance with such procedures or methods, at such locations, at such intervals, during such periods, and in such manner as the Department shall prescribe;

(4) Keep records on control equipment parameters, production variables, or other indirect data as appropriate;

(5) Submit compliance certifications; and

(6) Provide other information as the Department may require.

104.3 If the Department is denied access to enter or inspect the premises in accordance with this section, the Department may apply to the Superior Court of the District of Columbia or the Office of Administrative Hearings pursuant to § 12(b)(12) of the Office of Administrative Hearings Establishment Act of 2001, effective March 6, 2002 (D.C. Law 14-76; D.C. Official Code § 2-1831.09(b)(12)) for a search warrant.

Section 105, PENALTY, is amended to read as follows:

105 PENALTIES, COST RECOVERY, AND INJUNCTIVE RELIEF

105.1 In the event of any violation of, or failure to comply with, the air quality laws or regulations, every day of the violation or failure shall constitute a separate offense, and the penalties described in this section shall be applicable to each separate offense.

105.2 A person who violates the air quality laws or regulations is civilly liable and shall be subject to fines not more than thirty-seven thousand five hundred dollars ($37,500) per violation per day.

105.3 A person who knowingly or willfully violates the air quality laws or regulations is guilty of a criminal misdemeanor and, upon conviction, shall be subject to a fine not to exceed twenty-five thousand dollars ($25,000), imprisonment not to exceed one (1) year, or both.

105.4 A person who knowingly makes a false statement in an application, record, report, plan, or other document submitted or maintained under this act shall be guilty of a misdemeanor and subject to a fine not to exceed ten thousand dollars ($10,000), imprisonment not to exceed six (6) months, or both.

105.5 In the alternative to civil fines, the Department may impose an administrative fine, penalty, or cost pursuant to the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985, as amended (D.C. Law 6-42; D.C. Official Code §§ 2-1801 *et seq.*) and its implementing regulations.

105.6 In addition to or in lieu of the civil, criminal, and administrative penalties in this section, the Attorney General for the District of Columbia may commence appropriate civil action in the Superior Court of the District of Columbia or any other court of competent jurisdiction for damages, cost recovery, and injunctive or other appropriate relief to enforce compliance with the air quality laws and regulations.

Section 106, CONFIDENTIALITY OF REPORTS, is repealed and replaced with the following:

106 ENFORCEMENT

106.1 The Department may enforce a violation of the air quality laws or regulations by issuing one or more of the following:

(a) Administrative order, notice of violation, or cease and desist order;

(b) Notice of infraction;

(c) Civil or criminal judicial enforcement action;

(d) Notice of modification, suspension, revocation, or denial of a permit in accordance with 20 DCMR §§ 202 and 303; or

(e) Any other order or compliance document necessary to protect human health or the environment, or to implement or enforce the air quality laws and regulations.

106.2 Each notice shall identify the violation and, if applicable:

(a) In the case of a notice of infraction, include an assessment of a fine for each violation being cited; and

(b) In the case of a notice of infraction or notice of permit modification, suspension, revocation, or denial, state the procedure for requesting a hearing to appeal the notice.

106.3 If the Department determines that a hazardous condition exists that may endanger the public health or safety of the citizens or environment within the District of Columbia due to noncompliance with federal or District air quality laws or regulations, the Department may issue a cease and desist order, which requires a violator to cease operations and implement corrective actions immediately to contain the hazardous condition. The order shall:

(a) Describe the nature of the violation;

(b) Take effect at the time and on the date signed;

(c) Identify the corrective actions to be taken or actions that must be immediately suspended; and

(d) State the procedure for requesting a hearing to appeal the order.

106.4 If the Department determines that there has been a violation of federal or District air quality laws or regulations, the Department may issue an administrative order, which requires a violator to take action to come into compliance. The order shall:

(a) Describe the nature of the violation;

(b) Take effect at the time and on the date signed;

(c) Identify the corrective actions to be taken or actions that must be immediately suspended; and

(d) State the procedure for requesting a hearing to appeal the order.

Section 107, CONTROL DEVICES OR PRACTICES, is repealed and replaced with the following:

107 APPEALS

107.1 Any person adversely affected by an action of the Department taken or proposed to be taken pursuant to the Act or air quality regulations may request a hearing within fifteen (15) calendar days of service, or twenty (20) calendar days if service is made by United States mail. If specific instructions are not on the notice or order, the person shall file a written request for a hearing, including the grounds for the objection, in accordance with the Office of Administrative Hearings: Rules of Practice and Procedure in Chapter 28 of Title 1 DCMR.

107.2 An appeal request does not stay the effective date of an administrative order or cease and desist order issued pursuant to § 106 of this title. If a hearing is not requested within the fifteen (15) day time period, or twenty (20) calendar days if service is made by United States mail, the order becomes final and remains in effect until the Department determines that the corrective actions have alleviated the violations and the dangerous conditions, if applicable.

107.3 The Department may take any adverse action proposed or contemplated without a hearing if the aggrieved person fails to timely request a hearing, or the party fails to appear at a scheduled hearing for which no continuance has been granted.

Section 199, DEFINITIONS AND ABBREVIATIONS, is amended as follows:

199 DEFINITIONS AND ABBREVIATIONS

199.1 When used in the air quality regulations, Chapters 1 through 20 of Title 20 DCMR, the following terms shall have the meaning ascribed:

By adding a definition for "Act" to read as follows:

Act – except as used in Chapter 3 of Title 20, the District of Columbia Air Pollution Control Act of 1984, effective March 15, 1985 (D.C. Law 5-165) as amended, (D.C. Official Code §§ 8-101.01 *et seq*.).

By deleting the definition of "affected facility."

By amending the definition of "air pollution" to read as follows:

Air pollution – the presence in the outdoor atmosphere of one or more air pollutants in sufficient quantities and of characteristics and duration as are likely to be injurious to public welfare, to the health of humans, to plant or animal life, or to property, or which interferes with the reasonable enjoyment of life and property.

By adding a definition of "air quality regulations" to read as follows:

Air quality regulations – unless otherwise specified, regulations issued pursuant to the District of Columbia Air Pollution Control Act of 1984, effective March 15, 1985 (D.C. Law 5-165) as amended, (D.C. Official Code §§ 8-101.01 *et seq*.).

By amending the definition of "annual process rate" to read as follows:

Annual process rate – the actual or estimated annual fuel, process, or solid waste operating rate.

By amending the definition of "begin actual construction" to read as follows:

Begin actual construction – the initiation of physical on-site construction activities on an emissions unit that are of a permanent nature. These 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 operations, this term refers to those on-site activities other than preparatory activities that mark the initiation of the change.

By amending the definition of "blending plant" to read as follows:

Blending plant – any refinery or other facility at which oxygenated gasoline is produced through the addition of oxygenates, and at which the quality or quantity of the gasoline is not altered in any other manner.

By amending the definition of "building, structure, facility, or installation" to read as follows:

Building, structure, facility, or installation – all of the pollutant emitting activities that belong to the same industrial grouping, are located on one (1) 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" (*i.e.*, which have the same first two (2) 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).

By amending the definition of "certifying individual" to read as follows:

Certifying individual – the individual responsible for the completion and certification of the emission statement and who will take legal responsibility for the emission statement's accuracy.

By amending the definition of "Clean Air Act" to read as follows:

Clean Air Act – the federal Clean Air Act, enacted December 31, 1970 (Public Law 91-604), as amended (42 USC §§ 7401 *et seq.*).

By amending the definition of "commence" to read as follows:

Commence – as applied to construction of a major stationary source or major modification - that the owner or operator has obtained all necessary preconstruction approvals or permits and either has:

(a) Begun, or caused to begin, a continuous program of physical on-site construction of a 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.

By amending the definition of "complete" to read as follows:

Complete – in reference to an application for a permit, that the application contains all of the information necessary for processing the application, as determined by the Department.

By amending the definition of "component" to read as follows:

Component – any piece of equipment that has the potential to leak volatile organic compounds and that is tested in the manner described in § 702 of the air quality regulations. These sources include, but are not limited to, pumping seals, compressor seals, seal oil degassing vents, pipeline valves, flanges and other connections, pressure relief devices, process drains, and open-ended pipes. Excluded from these sources are valves which are not externally regulated.

By amending the definition of "condensate" to read as follows:

Condensate – hydrocarbon liquid separated from natural gas that condenses due to changes in the temperature or pressure and remains liquid at standard conditions.

By amending the definition of "control device" to read as follows:

Control device – any device that has as its primary function the control of emissions from fuel burning, refuse burning, or from a process, and thus reduces the creation of, or the emission of, air pollutants into the atmosphere, or both.

By amending the definition of "control efficiency" to read as follows:

Control efficiency – the actual total control efficiency achieved by the control device(s).

By amending the definition of "control equipment identification code" to read as follows:

Control equipment identification code – the tracking code established by the U.S. Environmental Protection Agency that defines the equipment used to reduce, by destruction or removal, the amount of air pollutant(s) in an air stream prior to discharge to the ambient air.

By amending the definition of "crude oil" to read as follows:

Crude oil – a naturally occurring mixture that consists of hydrocarbons and sulfur, nitrogen, and oxygen derivatives of hydrocarbons and that is liquid at standard conditions.

By amending the definition of "cutback asphalt" to read as follows:

Cutback asphalt – any asphalt cement that has been liquified by blending with a volatile organic compound(s).

By amending the definition of "Department" to read as follows:

Department – the Department of Energy and Environment (DOEE).

By amending the definition of "Director" to read as follows:

Director – the Director of the Department of Energy and Environment or the Director's duly authorized representative.

By amending the definition of "dispersion technique" to read as follows:

Dispersion technique – includes any intermittent or supplemental control of air pollutants varying with atmospheric conditions, or so much of the stack height of any source that exceeds the greater of sixty-five (65) meters (213 feet) or $H_g = H + 1.5L$, where H_g + maximum stack height determined from consideration of all nearby structures, measured from the ground-

level elevation at the base of the stack, H = height of nearby structure(s) measured from the ground-level elevation at the base of the stack, L = lesser dimension (height or projected width) of nearby structure(s), or so much of the stack height of any source that exceeds the height determined by a demonstration performed to the satisfaction of the Department. In determining whether a demonstration is performed satisfactorily, the Department shall take into consideration, among other factors, the methods, documents, and practices used in performing the demonstration.

By amending the definition of "Distributor" to read as follows:

Distributor – any person or party who supplies gasoline for delivery to a retail outlet.

By amending the definition of "emission factor" to read as follows:

Emission factor – an estimate of the rate at which a pollutant is released to the atmosphere as the result of some activity divided by the rate of that activity.

By amending the definition of "emission statement" to read as follows:

Emission statement – annual report of actual emissions of oxides of nitrogen and volatile organic compounds required of each owner or operator of stationary sources pursuant to the requirements of § 182(a)(3)(B) of the federal Clean Air Act.

By amending the definition of "emissions unit" to read as follows:

Emissions unit – any part of a stationary source that emits or would have the potential to emit any pollutant subject to regulation under the federal Clean Air Act or under the air quality regulations.

By amending the definition of "estimated emissions method code" to read as follows:

Estimated emissions method code – a one-position tracking code established by the U.S. Environmental Protection Agency that identifies the estimation technique used in the calculation of estimated emissions.

By amending the definition of "excessive concentrations" to read as follows:

Excessive concentrations – for the purpose of determining good engineering practice stack height in a demonstration, a maximum concentration due to downwash, wakes, or eddies produced by structures or terrain features that the Department determines would result in adverse health effect(s) beyond those that would be experienced in the absence of the downwash, wake, or

eddies. In determining the adverse health effect(s) resulting from downwash, wakes, or eddies, the Department shall take into consideration, among other factors, the following:

(a) The nature and concentration of the pollutant(s);

(b) The applicable National Ambient Air Quality Standard(s);

(c) Any other appropriate air quality standard(s); and

(d) The possible duration of exposure to the pollutant(s).

By amending the definition of "existing source" to read as follows:

Existing source – equipment, machines, devices, articles, contrivances, or installations that are under construction or in operation on February 1, 1985, except that any existing equipment, machine, device, article, contrivance, or installation that is altered, replaced, or rebuilt after February 1, 1985, shall be defined as a new source.

By amending the definition of "external floating roof" to read as follows:

External floating roof – a storage vessel cover in an open top tank consisting of a double deck or pontoon single deck that rests upon and is supported by the petroleum liquid being contained and is equipped with a closure seal or seals to close the space between the roof edge and tank wall.

By amending the definition of "federally enforceable" to read as follows:

Federally enforceable – all limitations and conditions that are enforceable by the Administrator, including those requirements developed pursuant to 40 CFR parts 60, 61, and 63 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, or any permit requirements not designated as "state only" in a federal operating permit, a permit issued pursuant to Chapter 3 of this title, or a permit issued pursuant to 40 CFR parts 70 and 71.

By amending the definition of "fossil fuel-fired steam-generating unit" to read as follows:

Fossil fuel-fired steam-generating unit – a furnace or boiler, or combination of furnaces or boilers connected to a common stack, used in the process of

burning fossil fuel for the primary purpose of producing steam by heat transfer.

By amending the definition of "fugitive emissions" to read as follows:

Fugitive emissions – those emissions that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

By amending the definition of "gas service" to read as follows:

Gas service – equipment that processes, transfers, or contains a volatile organic compound or mixture of volatile compounds in the gaseous phase.

By amending the definition of "incinerator" to read as follows:

Incinerator – any furnace used in the process of burning solid waste or sludge for the primary purpose of reducing the volume of the waste or sludge by removing combustible matter.

By amending the definition of "independent small business marketer of gasoline" to read as follows:

Independent small business marketer of gasoline – any person engaged in the marketing of gasoline who would be required to pay for procurement and installation of vapor recovery equipment under § 324 of the federal Clean Air Act or regulations promulgated thereunder, unless such person:

(a) Is a refiner;

(b) Controls, is controlled by, or is under common control with a refiner;

(c) Is otherwise directly affiliated with a refiner or with a person who controls, is controlled by, or is under common control with a refiner; or

(d) Receives less than fifty percent (50%) of his or her annual income from the refining or marketing of gasoline. For purposes of the definition of independent small business marketer of gasoline, the term "refiner" shall not include any refiner whose total refinery capacity (including the refinery capacity of any person who controls, is controlled by, or is under common control with such refiner) does not exceed sixty five thousand (65,000) barrels per day, and the terms "controls," "controlled by," or "common control" mean ownership of more than fifty percent (50%) of the refiner's common stock.

By deleting the definition of "lead-based paint activity."

By amending the definition of "leaking component" to read as follows:

Leaking component – a component that has a volatile organic compound concentration exceeding ten thousand (10,000) parts per million when tested in the manner described in Appendix B, EPA Guideline Series, EPA-450/2-78-036, OAQPS No. 1.2-111, June 1978.

By amending the definition of "loading facility" to read as follows:

Loading facility – any aggregation or combination of gasoline loading equipment that is both possessed by one (1) person, and located so that all the gasoline loading outlets for the aggregation or combination of loading equipment can be encompassed within any circle of three hundred feet (300 ft.) in diameter.

By amending the definition of "lowest achievable emission rate (LAER)" to read as follows:

Lowest achievable emission rate (LAER) – for any source, the more stringent rate of emissions based on the following:

(a) The most stringent emissions limitation that 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 that is achieved in practice by such class or category of stationary sources. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within or stationary source. In no event shall the application of the term permit 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.

By amending the definition of "major stationary source" to read as follows:

Major stationary source – any stationary source of air pollutants that emits, or has the potential to emit, one hundred tons per year (100 Tpy) or more of any pollutant regulated under the Clean Air Act, except that lower emissions thresholds shall apply as follows:

(a) Seventy (70) Tpy or more of PM_{10} or, where applicable, seventy (70) Tpy of a specific PM_{10} precursor, in any nonattainment area for PM_{10};

(b) Fifty (50) Tpy or more of carbon monoxide in any serious nonattainment area for carbon monoxide, where stationary sources contribute significantly to carbon monoxide levels in the area (as determined under rules issued by the EPA Administrator);

(c) Twenty-five (25) Tpy or more of nitrogen oxides or volatile organic compounds in any nonattainment area for ozone, except where paragraph (d) below is applicable;

(d) Ten (10) Tpy or more of nitrogen oxides or volatile organic compounds in any extreme nonattainment area for ozone;

(e) Any physical change that would occur at a stationary source not qualifying under paragraphs (a) - (d) above, is a major stationary source if the change would constitute a major stationary source by itself;

(f) A major stationary source that is major for volatile organic compounds or oxides of nitrogen shall be considered major for ozone; and

(g) The fugitive emissions of a stationary source shall not be included in determining major stationary source status, unless the source belongs to one (1) of the following categories of stationary sources:

(1) Coal cleaning plants (with thermal dryers);

(2) Kraft pulp mills;

(3) Portland cement plants;

(4) Primary zinc smelters;

(5) Iron and steel mills;

(6) Primary aluminum ore reduction plants;

(7) Primary copper smelters;

(8) Municipal incinerators capable of charging more than two hundred fifty tons (250 T) of refuse per day;

(9) Hydrofluoric, sulfuric, or nitric acid plants;

(10) Petroleum refineries;

(11) Lime plants;

(12) Phosphate rock processing plants;

(13) Coke oven batteries;

(14) Sulfur recovery plants;

(15) Carbon black plants (furnace process);

(16) Primary lead smelters;

(17) Fuel conversion plants;

(18) Sintering plants;

(19) Secondary metal production plants;

(20) Chemical process plants;

(21) Fossil-fuel boilers (or combination thereof) totaling more than two hundred fifty million British thermal units (250,000,000 Btus) per hour heat input;

(22) Petroleum storage and transfer units with a total storage capacity exceeding three hundred thousand (300,000) barrels;

(23) Taconite ore processing plants;

(24) Glass fiber processing plants;

(25) Charcoal production plants;

(26) Fossil fuel-fired steam electric plants of more than two hundred fifty million British thermal units (250,000,000 Btus) per hour heat input; and

(27) Any other stationary source category which, as of August 7, 1980, is being regulated under §§ 111 or 112 of the Clean Air Act.

By amending the definition of "modification" to read as follows:

Modification – other than as used in § 205 of the air quality regulations, any physical change in, or change in the method of operation of, a stationary source that increases or decreases the amount of any air pollutant emitted by the source, or that results in the emission of any air pollutant not previously emitted, except that the term shall not include the following:

(a) Routine maintenance, repair, or replacement;

(b) An increase in the hours of operation or in the production rate, unless the change would be prohibited under any federally enforceable permit condition established pursuant to § 204 of this title;

(c) Use of an alternative fuel or raw material if, prior to March 15, 1985, the affected facility was designed to accommodate the alternative use; and

(d) Decommissioning or removal.

By amending the definition of "multiple chamber incinerator" to read as follows:

Multiple chamber incinerator –

(a) Any incinerator consisting of three (3) or more refractory-lined combustion chambers in series, physically separated by refractory walls, interconnected by gas passage ports or ducts, and employing adequate design parameters necessary for maximum combustion of the material to be burned. The combustion chamber shall include as a minimum, one chamber principally for ignition, one chamber principally for mixing, and one chamber for combustion; and

(b) Any incinerator consisting of less than three (3) refractory-lined combustion chambers in series that is connected to an afterburner approved by the Director and employing adequate design parameters necessary for maximum combustion of the material to be burned.

By amending the definition of "nearby" to read as follows:

Nearby – as used in the definition of "dispersion technique," that distance up to five (5) times the lesser of the height or the projected width of a structure but not greater than eight tenths (0.8) kilometer (five tenths (0.5) mile). The height of the structure is measured from the ground-level elevation at the base of the stack. "Nearby" as applied to terrain features, means up to

the distance that a terrain feature has an adverse influence on stack effluent or eight tenths (0.8) kilometer (five tenths (0.5) mile), whichever is less; except, that if it is shown to the satisfaction of the Department that the eight tenths (0.8) kilometer (five tenths (0.5) mile) restriction is unreasonable, a new cutoff distance may be used. In the determination of the unreasonableness of the eight tenths (0.8) kilometer (five tenths (0.5) mile) cutoff for demonstrations, the Department shall take into consideration, among other factors, the extent and shape of the terrain feature(s) and the frequency of occurrence of meteorological conditions leading to excessive concentrations caused by downwash, wakes, or eddies.

By amending the definition of "necessary preconstruction approvals or permits" to read as follows:

Necessary preconstruction approvals or permits – those permits or approvals required under federal air quality control laws and regulations and those air quality control laws and regulations that are part of the State Implementation Plan for the District of Columbia.

By amending the definition of "new source" to read as follows:

New source – equipment, machines, devices, articles, contrivances, or installations built or installed on or after the effective date of the District of Columbia Air Pollution Control Act of 1984, or existing at that time that are later altered, repaired, or rebuilt. Any equipment, machines, devices, articles, contrivances, or installations moved to a new address, or operated by a new owner, or new lessee, after the effective date of the District of Columbia Air Pollution Control Act of 1984, shall be considered a new source.

By amending the definition of "non-oxygenated gasoline" to read as follows:

Non-oxygenated gasoline – any gasoline having an oxygen content of less than two percent (2%) by volume or four tenths of a percent (0.4%) by weight.

By amending the definition of "odor" to read as follows:

Odor – that property of an air pollutant that affects the sense of smell.

By amending the definition of "organic solvents" to read as follows:

Organic solvents – volatile organic compounds that are liquids at standard conditions, and that are used as dissolvers, viscosity reducers, or cleaning agents.

By amending the definition of "oxides of nitrogen" to read as follows:

Oxides of nitrogen – in air pollution usage, this comprises nitric oxide and nitrogen dioxide, expressed as the molecular weight of nitrogen dioxide.

By amending the definition of "oxygenate" to read as follows:

Oxygenate – any oxygen-containing compound approved for use in gasoline by the U.S. Environmental Protection Agency, including oxygen-containing compounds that comply with the U.S. Environmental Protection Agency's "substantially similar" definition under § 211(f)(1) of the federal Clean Air Act, or that have received a waiver from the U.S. Environmental Protection Agency under § 211(f)(4) of the federal Clean Air Act.

By amending the definition of "oxygenated gasoline" to read as follows:

Oxygenated gasoline – gasoline that contains one or more oxygenates.

By amending the definition of "oxygenated gasoline control area" to read as follows:

Oxygenated gasoline control area – the District of Columbia portion of the Washington, D.C. - Maryland - Virginia Metropolitan Statistical Area.

By amending the definition of "oxygenated gasoline control period" to read as follows:

Oxygenated gasoline control period – the four (4) month period that begins on November 1st of each year and continues through the last day of February of the following year.

By adding a definition of "ozone season" to read as follows:

Ozone season – the period from May 1 through September 30 of a year.

By amending the definition of "particulate matter" to read as follows:

Particulate matter – any finely divided material, with the exception of uncombined water that, under standard conditions, exists as a liquid or solid; except that when a test procedure for particulate matter, specified elsewhere in the air quality regulations, is applicable, particulate matter shall be defined by the specified test procedure.

By amending the definition of "peak ozone season" to read as follows:

Peak ozone season – the consecutive three (3) month period from June 1st through August 31st.

By amending the definition of "percentage annual throughput" to read as follows:

Percentage annual throughput – the weighted percent of yearly activity for the following consecutive three (3) month periods:

(a) December through February;

(b) March through May;

(c) June through August; and

(d) September through November.

By amending the definition of "person" to read as follows:

Person – includes individuals, firms, partnerships, companies, corporations, trusts, associations, organizations, and any other private or governmental entities, including federal and District government entities.

By amending the definition of "plant" to read as follows:

Plant – the total facilities available for production or service.

By amending the definition of "point" to read as follows:

Point – a physical emission point or process within a plant that results in pollutant emissions.

By amending the definition of "process" to read as follows:

Process – any action, operation, or treatment of materials, including handling and storage of the materials that may cause the discharge of an air pollutant or pollutants, into the atmosphere, excluding fuel burning and refuse burning.

By amending the definition of "process rate" to read as follows:

Process rate – quantity per unit time of any fuel burned, raw material or process intermediate consumed, or product generated through the use of any equipment, source operation, or process.

By amending the definition of "refiner" to read as follows:

Refiner – any person who owns, leases, operates, controls, or supervises a refinery.

By amending the definition of "refinery" to read as follows:

Refinery – any facility, including a blending plant that produces gasoline.

By amending the definition of "refinery unit" to read as follows:

Refinery unit – a set of components that are a part of a basic process operation such as distillation, hydrotreating, cracking, or reforming of hydrocarbons.

By amending the definition of "Reid Vapor Pressure" to read as follows:

Reid Vapor Pressure – the vapor pressure of a liquid at a temperature of 100 °F (37.8 °C), expressed in pounds force per square inch absolute or kilopascals, as determined by the *Reid Method* as described in the ASTM International Standard D 323, "Standard Test Method for Vapor Pressure of Petroleum Products (Reid Method)."

By amending the definition of "retailer" to read as follows:

Retailer – any person who owns, leases, operates, controls, or supervises a retail outlet.

By amending the definition of "retail outlet" to read as follows:

Retail outlet – any establishment at which motor fuel is sold or offered for sale to the general public for use in motor vehicles.

By amending the definition of "secondary emissions" to read as follows:

Secondary emissions – emissions that 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 areas as the stationary source or modification that causes the secondary emissions. Secondary emissions include emissions from any offsite support facility that 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 emission that come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

By amending the definition of "segment" to read as follows:

Segment – components of an emissions point or process at the level that emissions are calculated.

By amending the definition of "solid waste" to read as follows:

Solid waste – a refuse, more than fifty percent (50%) of which is waste consisting of a mixture of paper, wood, yard wastes, food wastes, plastics, leather, rubber, and other combustibles, and noncombustible materials such as glass and rock.

By amending the definition of "source" to read as follows:

Source – any property, real or personal, that emits or may emit any air pollutant. For purposes of sources affecting non-attainment areas and permits for the sources under § 204 of the air quality regulations, the term includes both plants and each individual piece of process equipment.

By amending the definition of "standard conditions" to read as follows:

Standard conditions – a dry gas temperature of seventy degrees Fahrenheit (70° F.) and a gas pressure of fourteen and seven tenths (14.7) pounds per square inch absolute (psia).

By amending the definition of "standard industrial classification code" to read as follows:

Standard industrial classification code – a series of codes devised by the U.S. Office of Management and Budget to classify establishments according to the type of economic activity in which they are engaged.

By amending the definition of "start-up" to read as follows:

Start-up – the setting in operation of a stationary or other source for any purpose; except that for fuel-burning equipment that generates steam, start-up shall mean a period from initial fire to the time steam can be delivered in usable form to steam-using equipment.

By amending the definition of "State Implementation Plan or SIP" to read as follows:

State Implementation Plan or SIP – a plan approved or promulgated under Sections 110 or 172 of the Clean Air Act, 42 USC §§ 7410 or 7502.

By amending the definition of "stationary source" to read as follows:

Stationary source – a building, structure, facility, installation, or group of buildings, structures, facilities, or installations that emits or may emit any air pollutant subject to regulation under the federal Clean Air Act or the air quality regulations.

By amending the definition of "submit or serve" to read as follows:

Submit – to send or transmit a document, information, or correspondence to the person specified in accordance with the applicable regulation:

(a) In person;

(b) By United States Postal Service first-class mail with the official postmark or, if submittal is by the Director, by any other mail service of the United States Postal Service; or

(c) By other means with an equivalent time and date mark used in the course of business to indicate the date of dispatch or transmission and a record of prompt delivery. Compliance with any "submission", "service", or "mailing" deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.

By amending the definition of "substrate" to read as follows:

Substrate – the base material that is coated or printed.

By amending the definition of "terminal" to read as follows:

Terminal – a gasoline storage and distribution facility with an average daily throughput greater than forty thousand (40,000) gallons of gasoline.

By amending the definition of "typical ozone season day" to read as follows:

Typical ozone season day – a day typical of that period of the year during the peak ozone season.

By amending the definition of "volatile organic compound (VOC)" to read as follows:

Volatile organic compound (VOC) – a volatile organic compound as that term is defined by the United States Environmental Protection Agency at 40 CFR § 51.100(s), as supplemented or amended, which is incorporated by reference herein. In addition to test methods specified elsewhere in this title, the most recent version of ASTM Method D6886 shall be considered an appropriate method for determining compliance with VOC emission limits, within the scope of the method.

By amending the definition of "wholesale purchaser-consumer" to read as follows:

Wholesale purchaser-consumer – any ultimate consumer of gasoline who purchases or obtains gasoline from a supplier for use in motor vehicles and

receives delivery of that product into a storage tank, substantially under the control of that person, of at least five hundred fifty (550) gallon capacity.

199.2 When used in the air quality regulations, the following abbreviations shall have the meaning ascribed:

ASTM	ASTM International
BTU	British thermal unit
°C	Degree Celsius
cal.	Calorie(s)
cfm	Cubic feet per minute
CO	Carbon Monoxide
CFR	Code of Federal Regulations
COH_3	Coefficient of haze
CPI	Consumer Price Index
EPA	United States Environmental Protection Agency
°F	Degree Fahrenheit
ft	Foot (Feet)
g.	Gram(s)
GEP	Good Engineering Practice
Hg	Mercury
Hi-Vol	High Volume Samplers
H_2O	Water
hr	Hour(s)
H_2S	Hydrogen Sulfide
In.	Inch
In. H_2O	Inches of water
LAER	Lowest Achievable Emission Rate
Lb	Pound
max.	Maximum
mm	Millimeter
mm Btu	Million Btu
mm HG	Millimeters of mercury
mol	Mole
MWe	Megawatt electrical
NESHAP	National Emission Standard(s) for Hazardous Air Pollutants
NO_x	Nitrogen Oxides, or Oxides of Nitrogen
NO_2	Nitrogen Dioxide
No.	Number
NSPS	New Source Performance Standard

O_2	Oxygen
PM	Particulate Matter
PM_{10}	Particulate Matter with an aerodynamic diameter less than 10 microns
$PM_{2.5}$	Particulate Matter with an aerodynamic diameter less than 2.5 microns
ppm	Parts Per Million
ppmv	Parts Per Million by Volume
psia	Pounds per Square Inch Absolute Pressure
RACT	Reasonably Available Control Technology
SIC	Standard Industrial Classification
SIP	State Implementation Plan
SO_2	Sulfur Dioxide
ton	Short ton unless otherwise specified
ug/m^3	Microgram(s) per cubic meter
U.L.	Underwriters Laboratories (www.ul.com)
VOC	Volatile Organic Compound
[mu] m	Micrometer-10 Meter

Chapter 2, AIR QUALITY – GENERAL AND NON-ATTAINMENT AREA PERMITS, is amended as follows:

Section 202, MODIFICATION, REVOCATION AND TERMINATION OF PERMITS, is amended to read as follows:

202 AMENDMENT, SUSPENSION, REVOCATION, AND DENIAL OF PERMITS

202.1 After providing notice and opportunity for appeal pursuant to § 107 of the air quality regulations, the Department may amend, suspend, revoke, or deny the issuance or renewal of a permit issued pursuant to this chapter.

202.2 The Department may take action pursuant to § 202.1 of the air quality regulations if action is warranted by amendments to the District or federal air quality laws and regulations or if the applicant or permit holder:

(a) Has violated or failed to comply with any of the terms and conditions of the permit, District or federal air quality laws and regulations, or an Order of the Department;

(b) Has made a false statement or misrepresentation material to the issuance, modification, or renewal of a permit;

(c) Has submitted a false or fraudulent record, invoice, or report; or

(d) Has had a permit denied, revoked, or suspended in the District or by another state or jurisdiction.

202.3 Except in cases of willfulness or cases in which the public health or welfare requires otherwise, no permit shall be amended, suspended, or revoked unless, prior to the institution of proceedings, facts or conduct that may warrant action have been called to the attention of the permittee in writing, and the permittee has been given an opportunity to demonstrate or achieve compliance with all lawful requirements.

202.4 The Department may terminate or amend a permit upon the written request of the permittee.

202.5 A permit amendment shall be subject to notice and opportunity for public comment and hearing as required by § 210 of the air quality regulations, if the proposed amendment:

(a) Involves a significant change in existing monitoring permit terms or conditions, or constitutes a relaxation of reporting or record keeping permit terms or conditions:

(b) Requires change to a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;

(c) Seeks to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject;

(d) For permits to construct, seeks to change the type of emissions control device or equipment to be constructed, and the new equipment has a higher potential to emit, emissions rate, heat input, or electrical output; or

(e) Otherwise warrants public notice and comment, as determined by the Department.

202.6 A permit to construct or modify a source shall be valid only if used within one (1) year from the date of issuance in one (1) of the following ways:

(a) The permittee has begun, or caused to begin, a continuous program of physical on-site construction of a source to be completed within a reasonable time; or

(b) The permittee has entered into binding agreements or contractual obligations that 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.

202.7 An action to amend, suspend, revoke, or deny the issuance or renewal of a permit under this section shall be in writing and shall include the following:

(a) The name and address of the applicant, or holder of, the permit;

(b) A statement of the proposed action and the proposed effective date and duration of a proposed suspension or denial of a permit;

(c) A statement of the reasons for the proposed action;

(d) A statement of when reapplication, if applicable, is acceptable;

(e) The procedure for requesting an appeal of the Department's proposed action before it becomes final; and

(f) Any additional information that the Department deems necessary or appropriate to support the proposed action.

202.8 If the applicant or holder of permit requests an appeal pursuant to this section, a written response to the Department's legal and factual basis for the proposed action is required, including any explanations, comments, and arguments relevant to the proposed action.

DEPARTMENT OF ENERGY AND ENVIRONMENT

NOTICE OF FINAL RULEMAKING

Air Quality Permit Fees and Synthetic Minor Permitting Program

The Director of the Department of Energy and Environment (DOEE or Department), pursuant to the authority set forth in Sections 103(b)(1)(B)(ii)(III) and 107(4) of the District Department of the Environment Establishment Act of 2005, effective February 15, 2006 (D.C. Law 16-51; D.C. Official Code § 8-151.03 (b)(1)(B)(ii)(III) and 8-151.07(4) (2013 Repl. & 2019 Supp.)); Sections 5 and 6 of the District of Columbia Air Pollution Control Act of 1984, effective March 15, 1985 (D.C. Law 5-165; D.C. Official Code §§ 8-101.05 *et seq*. (2013 Repl. & 2019 Supp.)); Mayor's Order 1998-44, dated April 10, 1998; and Mayor's Order 2006-61, dated June 14, 2006, hereby gives notice of the adoption of the following amendments to Chapters 1 (Air Quality – General Rules), 2 (Air Quality – General and Non-Attainment Area Permits) and 3 (Air Quality – Operating Permits and Acid Rain Programs) of Title 20 (Environment) of the District of Columbia Municipal Regulations (DCMR).

A Notice of Proposed Rulemaking was published in the D.C. Register for a thirty (30) day public notice and comment on February 3, 2017 at 64 DCR 001168) At the request of one commenter, the comment period was extended until March 24, 2017 by publication of notice on the DOEE website. The Department received comments from the DC Water and Sewer Authority ("WASA"), the U.S. Environmental Protection Agency ("EPA"), and the Sierra Club on the proposed rulemaking. The Department has made four (4) changes in this Final Rulemaking in response to comments received.

DC Water submitted two (2) comments that were supportive of the rulemaking, and therefore required no further response. EPA submitted two (2) comments on the rulemaking. The first comment identified a typographical error in § 200.8, which the Department has corrected. EPA also commented that the Department should clarify the distinction between a "general permit" as provided under 20 DCMR § 303.6(a)(2)(D), and a "general permit" as provided under 20 DCMR § 200, which the Department has done in this Final Rulemaking by amending § 303.6.

The Sierra Club submitted six (6) comments on this rulemaking. The first comment was that the proposed rulemaking undermined public participation in the agency decision-making process because it did not provide a rationale for the proposed changes. The Department notes that it extended the public comment period for this rulemaking in order to enhance public participation and that it fully met the requirements for rulemaking under the D.C. Administrative Procedure Act, therefore the Department did not make any changes in response to this comment. The second comment was that the proposed synthetic minor permit program is incomplete and arbitrary because it does not set forth specific requirements for the synthetic minor permits and does not specify that the limits in the permits must be federally and practicably enforceable. The Department did not make any changes in response to the first portion of this comment, as it disagrees with the commenter's assertion that the permitting process is insufficiently clear, however did make amendments to clarify that the emission limits in synthetic minor permits must be both federally and practicably enforceable, including adding a definition for

"enforceable as a practical matter." The third comment was that the proposed synthetic minor permit program threatens the public health with unregulated hazardous air pollutants. The Department did not agree with Sierra Club's assessment in this comment because there are other regulatory requirements that would apply to synthetic minor sources of hazardous air pollutants, therefore, the Department did not make any changes in response to this comment. The fourth comment was that the notice and comment procedures for draft permits are inadequate. The Department did not make any changes in response to this comment because this rulemaking action did not propose any substantive changes to the notice and comment provisions, and it maintains that they are sufficient to meet federal requirements. The fifth comment was that the provisions for source category permits improperly exclude public participation. The Department did not make any changes in response to this comment because this rulemaking action did not propose any substantive changes to the source category permit requirements, it believes that that public participation is adequately accounted for in these procedures, and because source category permits are an efficient and effective regulatory mechanism that is employed by many other jurisdictions. Sierra Club's final comment was that the judicial review procedures under 20 DCMR § 303 are unclear. The Department agreed with this comment and has clarified the procedure for review of Title V permit decisions in this Final Rulemaking.

For a detailed summary of the comments and responses, please see the Department's website at: https://doee.dc.gov/service/public-notices-hearings.

These rules were adopted as final on February 18, 2020 and will be effective upon publication of this notice in the *D.C. Register*.

Chapter 1, AIR QUALITY – GENERAL RULES, of Title 20 DCMR, ENVIRONMENT, is amended to read as follows:

Section 199, DEFINITIONS AND ABBREVIATIONS, is amended as follows:

199 DEFINITIONS AND ABBREVIATIONS

199.1 When used in Chapters 1 through 20 of Title 20 DCMR, where not otherwise distinctly expressed or manifestly incompatible with the intent of this subtitle, the following term shall have the meaning ascribed:

By adding a definition of "enforceable as a practical matter" to read as follows:

Enforceable as a practical matter – for an emission limitation or for other standards (design standards, equipment standards, work practices, operational standards, pollution prevention techniques) in a permit for a source means that the permit's provisions specify:

(a) A limitation or standard and the emissions units or activities at the source subject to the limitation or standard;

(b) The time period for the limitation (e.g., hourly, daily, monthly, and/or annual limits such as rolling annual limits); and

(c) The method to determine compliance, including appropriate monitoring, record keeping, reporting, and testing.

Chapter 2, AIR QUALITY - GENERAL AND NON-ATTAINMENT AREA PERMITS, of Title 20 DCMR, ENVIRONMENT, is amended as follows:

Section 200, GENERAL PERMIT REQUIREMENTS, is amended to read follows:

200 GENERAL PERMIT REQUIREMENTS

200.1 A permit from the Department shall be obtained before any person shall cause, suffer, or allow the construction of a new stationary source, the modification of an existing stationary source, or the installation or modification of any air pollution control device on a stationary source.

200.2 An operating permit shall be obtained from the Department before any person shall cause, suffer, or allow the operation of the following:

(a) Any major stationary source for which a construction or modification permit is required under § 200.1; or

(b) Any source for which a construction or modification permit is required under § 200.1, and which construction or modification permit was subject to conditions which affect, or would affect, the operation of the source.

200.3 The Department may allow the temporary operation of a source for a period no longer than one (1) month, in accordance with the requirements of this chapter, which may be extended month to month, to enable the initial evaluation of the operation of a source or device granted a permit under § 200.1, or to enable the continued operation of a source for which an application for an operating permit under § 200.2 has been filed, but due to delays attributable to the Department the permit has not been issued.

200.4 Construction and operating permits shall be valid for the period specified in the permit, but not to exceed five (5) years.

200.5 Each person owning or operating a stationary source or device for which a permit is required shall timely file with the Department the appropriate application, including applications for renewal of any construction or operating permit, if construction activities or operations are to continue beyond the expiration date of an existing permit.

200.6 The Department may establish a condition in a permit issued pursuant to this chapter that limits, in a manner that is enforceable as a practical matter, emissions from a source so as to avoid applicability of the permitting requirements of § 300.1. Such a limit must not be designated as enforceable only by the District.

200.7 The Department may establish a condition in a permit issued pursuant to this chapter that limits, in a manner that is enforceable as a practical matter, emissions from a source so as to avoid applicability of a District or federal air quality regulation, other than the requirements of § 300.1, except when prohibited by another District or federal regulation. Such a limit must not be designated as enforceable only by the District.

200. 8 The Department may establish a source category permit covering a group of similar sources or emission units according to (a) through (i) of this subsection:

(a) Any source category permit shall comply with all requirements applicable to the source pursuant to the air quality regulations of this title;

(b) During establishment of any source category permit, the Department shall establish criteria by which sources may qualify for the source category permit;

(c) The Department shall maintain records of the public comments and issues raised during the public participation process;

(d) A source category permit shall not be a substitute for a permit required under Chapter 3 of this title;

(e) A response to each source category permit application may not be provided, rather the source category permit may specify a reasonable period of time after which an application is deemed approved and the applicant may construct and operate under the source category permit;

(f) The applicant for a source category permit may be issued an individual permit, letter, or other document indicating that the application has been approved or denied;

(g) If the Department provides an individual response, as provided in paragraph (f), the permittee shall retain the response and make it available on request to authorized officials of the Department;

(h) Any established source category permit is subject to the expiration and renewal conditions found in § 200.4 and § 200.5 and may be revised by following the same process as is used for original establishment of the permit; and

(i) The draft source category permit shall be subject to the public notice and comment requirements of § 210, however individual applications for the permit are not subject to public notice and comment.

200.9 Applications for permits shall be filed with the Department on the form or forms that the Department shall prescribe and shall be accompanied by the data, information, and analyses necessary or desirable to enable the Department to determine whether the requested permit should be issued or denied.

200.10 The Department may require, at any time, the submission of data, information, and analyses that the Department deems necessary or desirable, to allow the Department to determine whether a requested permit should be issued or denied, or an outstanding permit should be modified or revoked.

200.11 Applications for construction and operating permits may incorporate by reference data, information, and analyses otherwise available or provided to the Department, provided that the reference is clear and specific.

200.12 Each permit application shall be accompanied by a fee established by the Department in Section 211, which shall be sufficient to cover the reasonable costs of reviewing and acting upon the permit application and implementing and enforcing the terms and conditions of the permit.

200.13 An application for a permit shall be signed in the following manner:

(a) If the applicant is a partnership, a general partner shall sign the application;

(b) If the applicant is a corporation, association, or cooperative, an officer shall sign the application;

(c) If the applicant is a sole proprietorship, the proprietor shall sign the application; and

(d) If the applicant is a government or governmental agency, department, or board, a senior executive of that government agency, department, or board who has authority to sign shall sign the application.

200.14 No permit shall be required for any fuel burning equipment which has a capacity of five million British thermal units (5,000,000 Btu) or less per hour of heat input and which uses for fuel only gaseous fuels or distillate oils. This section shall not apply to sources subject to § 204.

200.15 A person shall comply with the conditions of any permit issued pursuant to this chapter.

Section 210, NOTICE AND COMMENT PRIOR TO PERMIT ISSUANCE, is amended to read follows:

210 NOTICE AND COMMENT PRIOR TO PERMIT ISSUANCE

210.1 Before issuing a permit under this chapter, the Department shall prepare a draft permit and provide adequate notice to ensure that the affected community and the general public have reasonable access to the application and draft permit information.

210.2 With the exception of any information that the Department deems confidential, the Department shall make available for public inspection:

(a) The application for a permit and any additional information that the Department requests;

(b) The Department's analysis of the application, including, where required or deemed appropriate, an ambient air quality analysis, a regulatory review, and a control technology review; and

(c) The draft permit or justification for denial.

210.3 The Department shall publish a notice regarding the draft permit or denial in the *D.C. Register* and shall make the information in § 210.2 available for public inspection at the Department's office and by one or more of the methods described in § 210.4.

210.4 The Department shall use at least one (1) of the following procedures to ensure appropriate means of notification:

(a) Mail or e-mail a copy of the notice to persons on a mailing list that the Department develops consisting of those persons who have requested to be placed on such a mailing list;

(b) Post the notice on the Department's website;

(c) Publish the notice in a newspaper of general circulation in the area affected by the source;

(d) Provide copies of the notice for posting at one (1) or more locations in the area affected by the source, such as post offices, libraries, community centers, or other gathering places in the community; or

(e) Employ other means of notification as appropriate.

210.5 The notice shall include the following information at a minimum:

(a) Identifying information of the source, including the name and address of the facility, and the name and telephone number of the facility manager or other contact person;

(b) For preconstruction permits (including source category permits), the regulated New Source Review (NSR) pollutants to be emitted, the affected emissions units, and the emission limitations for each affected emissions unit;

(c) For preconstruction permits, the emissions change involved in the permit action;

(d) For permits to be issued with conditions pursuant to § 200.6 or § 200.7, a description of the proposed limitation and the resulting potential to emit of the source;

(e) The name, address, and telephone number of a contact person in the Department from whom additional information may be obtained;

(f) Locations and times of availability of the information specified in § 210.2; and

(g) A statement that any person may submit written comments, a written request for a public hearing, or both, on the draft permit action within thirty (30) days from the date of the public notice.

210.6 By mail or e-mail, a copy of the notice shall be sent to the applicant, the U.S. Environmental Protection Agency Region III, and to all Affected States (as defined in § 399) for the following permits:

(a) All NSR permits issued pursuant to § 204; and

(b) All source category permits, when initially issued.

A new Section 211, FEES, is added to read as follows:

211 FEES

211.1 Except as noted under § 211.4, owners or operators of sources required to obtain or renew a permit under this chapter for the construction, modification, or operation of a stationary source, or the installation, modification or operation of any air pollution control device on a stationary source, shall pay all fees applicable according to the following table:

Combustion Equipment	
$500	Cogeneration Unit, less than 1 Megawatt
$2,000	Cogeneration Unit, equal to or larger than 1 Megawatt
$500	Emergency Engines (Less than 1,340 hp)
$1,000	Emergency Engines (Equal to or greater than 1,340 hp)
$300	Fuel Burning Equipment – Small (Heat input less than 10 million Btu per hour)
$500	Fuel Burning Equipment – Medium (Heat input equal to or greater than 10 million Btu per hour, but less than 40 million Btu per hour)
$1,000	Fuel Burning Equipment – Large (Heat input equal to or greater than 40 million Btu per hour)
$1,000	Non-Emergency Engines (Less than 1,340 hp)
$2,000	Non-Emergency Engines (Equal to or greater than 1,340 hp)
Other Equipment or Activities	
$1,000	Asphalt Plant
$500	Concrete Plant - Portable
$500	Crushers and Screens
$250	Degreaser – Cold Solvent Tank
$500	Dry Cleaning Facility (using perchlorethylene, petroleum solvents, or n-propyl bromide)
$1,000	Gasoline Dispensing Station
$500	Intaglio, Flexographic, and Rotogravure Printing
$500	Lithograph or Letterpress Printing Operation
$500	Miscellaneous Parts Paint Spray Booth
$500	Mobile Equipment Refinishing
$5,000	New Source Review (NSR) Permit (applicable to initial construction permits only)
Facility Wide Permit	
$5,000	Plantwide Applicability Limit (PAL) Permit

211.2 If the stationary source or air pollution control device on a stationary source is not covered under § 211.1, the permit fee shall be one thousand dollars ($1,000).

211.3 The fee for a variance shall be one thousand five hundred dollars ($1,500).

211.4 Owners or operators who obtain a permit with a condition under § 200.6 shall pay permit fees pursuant to § 305.5.

211.5 Fees for permits issued pursuant to § 200.8 shall be prorated based on the number of years, or parts of years, that the permit is valid (rounded up to the next one-year increment).

211.6 Sources may apply for a permit with an effective period less than the default permit term, and pay a prorated fee (rounded up to the next one-year increment).

Chapter 3, AIR QUALITY - OPERATING PERMITS AND ACID RAIN PROGRAMS, is amended as follows:

Section 300, APPLICABILITY, is amended to read follows:

300 APPLICABILITY

300.1 Except as exempted from the requirement to obtain a permit under § 300.3 and elsewhere herein, the following sources shall be subject to the permitting requirements under this chapter:

(a) Any major source;

(b) Any source, including an area source, subject to a standard, limitation, or other requirement under § 111 of the Act;

(c) Any source, including an area source, subject to a standard or other requirement under § 112 of the Act, except that a source is not required to obtain a permit solely because it is subject to regulations or requirements under § 112(r) of the Act;

(d) Any affected source; and

(e) Any source in a source category designated by the Administrator pursuant to 40 CFR § 70.3.

300.2 In the event that this chapter conflicts or is inconsistent with other requirements of the air quality regulations of this title, this chapter shall supersede for sources subject to its provisions.

300.3 The following source category exemptions shall apply:

(a) All sources listed in § 300.1 that are not major sources, affected sources, or solid waste incineration units required to obtain a permit pursuant to § 129(e) of the Act, are exempt from the obligation to obtain a Part 70 permit unless required to do so under applicable requirements, or future rulemaking by the Administrator, but any such exempt source may apply for a permit under this chapter;

(b) If the Administrator decides to terminate the exemption of certain nonmajor sources when adopting standards or other requirements under § 111 or 112 of the Act after July 21, 1992, the nonmajor sources shall become subject to the permitting requirements in accordance with the standard or other requirement adopted by the Administrator;

(c) All sources that obtain a permit with a condition pursuant to § 200.6 that allows the source to avoid the applicability of § 300.1, and pay the associated fees pursuant to § 305.5, commonly referred to as a "synthetic minor" permit, are exempted from the requirements to obtain a Part 70 permit; and

(d) Sources in the following source categories shall be exempted from the obligation to obtain a Part 70 permit:

(1) All sources in source categories that would be required to obtain a permit solely because they are subject to 40 CFR Part 60, Subpart AAA - Standards of Performance for New Residential Wood Heaters; and

(2) All sources in source categories that would be required to obtain a permit solely because they are subject to 40 CFR Part 61, Subpart M - National Emission Standard for Hazardous Air Pollutants for Asbestos, 40 CFR § 61.145, Standard for Demolition and Renovation.

300.4 The emission units covered in a Part 70 permit shall be determined as follows:

(a) For major sources, the permit shall include all applicable requirements for all relevant emissions units in the major source; and

(b) For any nonmajor source subject to this rule under § 300.1 and not exempt under § 300.3, the permit shall include only the applicable requirements which apply to emissions units that cause the source to be subject to the requirement to obtain a permit under this chapter.

300.5 Fugitive emissions from a covered source shall be included in the permit application and the permit in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of major source.

Section 301, PERMIT APPLICATIONS, is amended to read follows:

301 PERMIT APPLICATIONS

301.1 For each Part 70 source, a timely and complete permit application shall be submitted by the owner or operator, and reviewed by the Department, in accordance with the following:

(a) A timely application shall be submitted under the following conditions:

(1) Sources that are subject to the operating permit program established by this chapter as of the date the program is approved by the Administrator, the "effective date," shall file applications on the following schedule:

(A) Sources that emitted one hundred fifty (150) tons per year or less of regulated pollutants in the aggregate during the previous calendar year shall file complete applications within eight (8) months of the effective date; provided, that upon request and for good cause shown, the Department may allow a source additional time up to twelve (12) months from the effective date; and

(B) All other sources shall file complete applications within twelve (12) months of the effective date;

(2) A source that becomes subject to the operating permit program established by this chapter at any time following the effective date shall file a complete application within twelve (12) months of the date on which the source first becomes subject to the program;

(3) A source that is required to meet the requirements under § 112(g) of the Act, or to have a permit under a preconstruction review program under Title I of the Act, shall file a complete application to obtain an operating permit or permit amendment or modification within twelve (12) months after commencing operation;

(4) Where an existing operating permit would prohibit the construction or change in operation, the source shall obtain a permit revision before commencing operation;

(5) Sources subject to this chapter shall file an application for renewal of an operating permit at least six (6) months before the date of permit expiration, unless a longer period (not to exceed eighteen (18) months) is specified in the permit; and

(6) Sources required to submit applications for initial phase II acid rain permits shall submit the applications to the Department by January 1, 1996, for sulfur dioxide, and by January 1, 1998, for nitrogen oxides;

(b) The following procedures shall be followed when Part 70 permit applications are received:

(1) Within five (5) days of receipt of an application, the Department shall notify the applicant of the date on which the application was

received and the date on which the application will automatically be deemed complete unless the Department determines otherwise;

(2) The Department shall review each application for completeness and shall inform the applicant within sixty (60) days if the application is incomplete;

(3) To be complete for purposes of this section, an application shall include a completed application form and, to the extent not called for by the form, the information required in §§ 301.4 and 301.5;

(4) An application shall be considered complete if it contains the information required by the application form and §§ 301.4 and 301.5;

(5) If the Department does not notify the source within sixty (60) days of receipt that its application is incomplete, the application shall be deemed complete, however nothing in this subsection shall prevent the Department from requesting additional information in writing that is necessary to process the application;

(6) The Department shall maintain a checklist to be used for the completeness determination, and a copy of the checklist shall be provided to applicants along with application forms issued by the Department;

(7) If, while processing an application that has been determined or deemed to be complete, the Department determines that additional information is necessary to evaluate or take final action on that application, the Department may request the additional information in writing and shall establish a reasonable deadline for a response;

(8) In submitting an application for renewal of an operating permit issued under this chapter, a source may identify terms and conditions in its previous permit that should remain unchanged and incorporate by reference those portions of its existing permit and the permit application and any permit amendment or modification applications that describe products, processes, operations, and emissions to which those terms and conditions apply;

(9) In submitting an application for renewal of an operating permit issued under this chapter, the source shall identify specifically and list the portions of its previous permit or applications that are incorporated by reference; and

(10) A renewal application shall contain the following:

(A) Information specified in §§ 301.4 and 301.5 for those products, processes, operations, and emissions of the following that:

(i) Are not addressed in the existing permit;

(ii) Are subject to applicable requirements that are not addressed in the existing permit; or

(iii) Are terms and conditions sought by the source that are different than those in the existing permit;

(B) A compliance plan and certification as required in § 301.5(h); and

(C) A compliance certification, as required by § 301.5(i);

(c) If a source submits information to the Department under a claim of confidentiality pursuant to § 114(c) of the Act, the source shall also submit a copy of the information, along with the claim of confidentiality, directly to the Administrator, if the Department requests that the source do so; and

(d) The contents of a Part 70 permit issued under this chapter shall not be entitled to confidential treatment.

301.2 An applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of the failure or incorrect submittal, promptly submit the supplementary facts or corrected information.

301.3 An applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date the applicant filed a complete application but prior to release of a draft permit.

301.4 All sources that are subject to the operating permit program established by this chapter shall submit applications on the standard application form that the Department provides for that purpose, which shall include information needed to determine the applicability of any applicable requirement and to evaluate the fee amount required under the schedule set forth in § 305.

301.5 The applicant shall submit the information called for by the application form for each emissions unit at the source to be permitted, and the application form and any attachments shall require that the following be provided:

(a) Identifying information, including company name and address (or plant name and address if different from the company name), owner's name and agent, and telephone number and names of plant site manager or contact;

(b) A description of the source's processes and products (by two-digit Standard Industrial Classification Code), including any associated with each alternate scenario identified by the source;

(c) The following emissions-related information:

(1) All emissions of pollutants for which the source is major and all emissions of regulated air pollutants as follows:

(A) A description of all emissions of regulated air pollutants emitted from any emissions unit; and

(B) Additional information related to the emissions of regulated air pollutants sufficient to verify which requirements are applicable to the source, and other information necessary to determine the amount of any permit fees owed under the fee schedule set forth in § 305;

(2) Identification and description of all points of emissions described in § 301.5(c)(1) in sufficient detail to establish the basis for fees and applicability of the Act's requirements;

(3) Emissions rates in tons per year and in such terms as are necessary to establish compliance consistent with the applicable standard reference test method, if any;

(4) The following information to the extent it is needed to determine or regulate emissions: fuels, fuel use, raw materials, production rates, and operating schedules;

(5) Identification and description of air pollution control equipment and compliance monitoring devices or activities;

(6) Limitations on source operation affecting emissions or any work practice standards, where applicable, for all regulated pollutants at the covered source;

(7) Other information required by any applicable requirement (including information related to stack height limitations developed pursuant to § 123 of the Act); and

(8) Calculations on which the information in subparagraphs (c)(1) through (c)(7) of this subsection is based;

(d) The following air pollution control requirements:

(1) Citation and description of all applicable requirements; and

(2) Description of or reference to any applicable test method for determining compliance with each applicable requirement;

(e) Other specific information that may be necessary to implement and enforce other applicable requirements of the Act or of this chapter or to determine the applicability of the requirements;

(f) An explanation of any proposed exemptions from otherwise applicable requirements;

(g) Additional information as determined to be necessary by the Department to define alternative operating scenarios identified by the source pursuant to § 302.1(j) or to define permit terms and conditions implementing §§ 302.1(k) or 302.8 of this chapter;

(h) A compliance plan for all covered sources that contains all of the following:

(1) A description of the compliance status of the source with respect to all applicable requirements;

(2) A description as follows:

(A) For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with the requirements;

(B) For applicable requirements that will become effective during the permit term, a statement that the source will meet the requirements on a timely basis; and

(C) For requirements for which the source is not in compliance at the time of permit issuance, a narrative description of how the source will achieve compliance with the requirements;

(3) A compliance schedule as follows:

(A) For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with the requirements;

(B) For applicable requirements that will become effective during the permit term, a statement that the source will meet the requirements on a timely basis;

(C) A statement that the source will meet in a timely manner applicable requirements that become effective during the permit term shall satisfy the provision under paragraph (B) of this subpart, unless a more detailed schedule is expressly required by the applicable requirement; and

(D) A schedule of compliance for sources that are not in compliance with all applicable requirements at the time of permit issuance, which shall:

(i) Include a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with any applicable requirements for which the source will be in noncompliance at the time of permit issuance; and

(ii) Resemble and be equivalent in stringency to that contained in any judicial consent decree or administrative order to which the source is subject, and shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based;

(4) A schedule for submission of certified progress reports no less frequently than every six (6) months for sources required to have a schedule of compliance under § 301.5(h)(3)(D); and

(5) The compliance plan content requirements specified in this subparagraph shall apply and be included in the acid rain portion of a compliance plan for an affected source, except as specifically superseded by regulations promulgated under Title IV of the Act with regard to the schedule and method(s) the source will use to achieve compliance with the acid rain emissions limitations;

(i) Requirements for compliance certification, including the following:

(1) A certification of compliance with all applicable requirements by a responsible official consistent with § 114(a)(3) of the Act and § 301.6;

(2) A statement of methods used for determining compliance, including a description of monitoring, recordkeeping, and reporting requirements and test methods;

(3) A schedule for submission of compliance certifications during the permit term, which shall be submitted annually, or more frequently if required by an underlying applicable requirement; and

(4) A statement indicating the source's compliance status with any applicable enhanced monitoring and compliance certification requirements of the Act;

(j) The use of nationally-standardized forms for acid rain portions of permit applications and compliance plans, as required by regulations promulgated under Title IV of the Act; and

(k) The permit application fee required pursuant to § 305.1.

301.6 Any application form, report, or compliance certification submitted pursuant to this chapter shall contain certification by a responsible official of truth, accuracy, and completeness, which shall meet the following requirements:

(a) This certification and any other certification required under this chapter shall be signed by a responsible official; and

(b) This certification and any other certification required under this chapter shall contain the following language: “I certify, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.”

301.7 Pursuant to § 300.4, a major source shall obtain a permit addressing all applicable requirements for all relevant emissions units in the major source, which may be complied with through one of the following methods:

(a) The source obtains a single permit for all relevant emission units; or

(b) The source requests and obtains coverage for one or more emission units eligible for coverage under a general permit or permits issued by the Department and obtains a separate permit for all remaining emission units not eligible for the coverage.

Section 303, PERMIT ISSUANCE, RENEWAL, REOPENINGS, AND REVISIONS, is amended to read follows:

303 PERMIT ISSUANCE, RENEWAL, REOPENINGS, AND REVISIONS

303.1 The following criteria shall be used in the processing of a permit application:

(a) A permit, permit modification, or permit renewal may be issued only if all of the following conditions have been met:

(1) The Department has received a complete application for a permit, permit modification, or permit renewal, except that a complete application need not be received before issuance of a general permit under § 302.4;

(2) Except for modifications qualifying for minor permit modification procedures under §§ 303.5(b) and 303.5(c), the Department has complied with the requirements for public participation under § 303.10;

(3) The Department has complied with the requirements for notifying and responding to affected States under § 304.2;

(4) The Department finds that the conditions of the permit provide for compliance with all applicable requirements and the requirements of Part 70; and

(5) The Administrator has received a copy of the proposed permit and any notices required under §§ 304.1 and 304.2, and has not objected to issuance of the permit under § 304.3 within the time period specified therein;

(b) Upon receipt of an application submitted pursuant to § 301, the Department shall provide notice to the applicant of whether the application is complete;

(c) Unless the Department requests additional information or otherwise notifies the applicant that the application is incomplete within sixty (60) days of receipt, the application shall be deemed complete;

(d) Following review of an application submitted in accordance with § 301, the Department shall issue a draft permit, permit modification, or permit renewal for public comment, in accordance with the public participation procedures in § 303.10; and

(1) The draft permit, permit modification, or permit renewal shall be accompanied by a statement that sets forth the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions); and

(2) The Department shall send the statement required by § 303.1(d)(1) to the Administrator, to affected States, and to the applicant, and shall place a copy in the public file;

(e) The Department shall transmit to the Administrator a proposed permit, permit modification, or permit renewal;

(f) The proposed permit, permit modification, or permit renewal shall be issued no later than fifty (50) days preceding the respective deadlines for permit issuance, permit modifications, and permit renewals established in this chapter, and shall contain all applicable requirements that have been promulgated and made applicable to the source as of the date of issuance of the draft permit; and

(g) If new requirements are promulgated or otherwise become newly applicable to the source following the issuance of the draft permit but before issuance of the final permit, the Department may either:

(1) Extend or reopen the public comment period (for an additional time not to exceed thirty (30) days) to solicit comment on additional permit provisions to implement the new requirements; or

(2) If the Department determines that extension or reopening of the public comment period would unduly delay issuance of the permit:

(A) The Department shall include within the proposed or final permit a provision stating that the permit will be reopened to incorporate the new requirements and expressly excluding the new requirements from the protection of the permit shield;

(B) If the Department elects to issue the proposed or final permit without incorporating the new requirements, the Department shall, within thirty (30) days of the new requirements becoming applicable to the source, institute proceedings pursuant to § 303.6 to reopen the permit to incorporate the new requirements; and

(C) The permit reopening proceedings may be instituted, but need not be completed, before issuance of the final permit;

(h) The following action shall be taken after the Department's transmittal of the proposed permit, permit modification, or permit renewal for the Administrator's review:

(1) Upon receipt of notice from the Administrator that the Administrator will not object to a proposed permit, permit modification, or permit renewal that has been transmitted for the Administrator's review pursuant to § 304, the Department shall issue the permit, permit modification, or permit renewal no later than the fifth (5th) day following receipt of the notice from the Administrator; or

(2) Upon the passage of forty-five (45) days after transmission of a proposed permit, permit modification, or permit renewal for the Administrator's review, and if the Administrator has not notified the Department that the Administrator objects to the proposed permit action, the Department shall issue the permit, permit modification, or permit renewal no later than the fiftieth (50th) day following transmission for the Administrator's review;

(i) Except as provided in §§ 303.1(j)(1) or (2), the Department shall take final action on each application for a permit within eighteen (18) months after receiving a complete application;

(j) For each permit application, the Department shall transmit a proposed permit, permit modification, or permit renewal to the Administrator no later than fifty (50) days before the appropriate deadline for permit issuance established in this section:

(1) The Department shall take final action on at least one-third (1/3) of all initial permit applications (as defined in § 301.1(a)(1)) annually during the first three (3) years following the effective date of the operating permit program; and

(2) The Department shall take action on any permit, permit modification, or permit renewal issued in compliance with regulations promulgated under Title IV or V of the Act for the permitting of affected sources under the Acid Rain Program within the time specified in those regulations; and

(k) To the extent feasible, applications shall be acted upon in the order received, except that priority shall be given to taking final action on applications for construction or modification under Title I, Parts C and D of the Act.

303.2 Except as provided in § 303.2(a), no source subject to this chapter may operate after the time that it is required to submit a timely and complete application under an approved permit program, except in compliance with a permit issued under this chapter:

(a) If the source subject to the requirement to obtain a permit under this chapter submits a timely and complete application for permit issuance or renewal, that source's failure to have a permit shall not be a violation of the requirement to have such a permit until the Department takes final action on the application;

(b) The protection of § 303.2(a) shall cease to apply if, subsequent to the completeness determination made pursuant to §§ 303.1(b) and (c), the applicant fails to submit by the deadline specified in writing by the Department any additional information needed to process the application; and

(c) The submittal of a complete application shall not affect the requirement that any source have a preconstruction permit under Title I of the Act.

303.3 Procedures affecting permit renewal and expiration shall be subject to the following requirements:

(a) Applications for permit renewal shall be subject to the same procedural requirements, including those for public participation, affected State comment, and Administrator's review, that apply to initial permit issuance under § 303.1;

(b) An application for permit renewal may address only those portions of the permit that require revision, supplementation, or deletion, incorporating the remaining permit terms by reference from the previous permit;

(c) In issuing a draft renewal permit or proposed renewal permit, the Department may specify only those portions that will be revised, supplemented, or deleted, incorporating the remaining permit terms by reference;

(d) A source's right to operate shall terminate upon the expiration of its permit unless a timely and complete renewal permit application has been submitted at least six (6) months before the date of expiration or the Department has taken final action approving the source's permit application for renewal by the expiration date; and

(e) If a timely and complete application for a permit renewal is submitted, but the Department fails to take final action to issue or deny the renewal permit before the end of the term of the previous permit, then the permit

shall not expire until the renewal permit has been issued or denied, and any permit shield granted for the permit shall continue in effect during that time.

303.4 Administrative permit amendments shall be governed as follows:

(a) An "administrative permit amendment" is a permit revision that:

(1) Corrects typographical errors;

(2) Identifies a change in the name, address, or phone number of any person identified in the permit, or provides a similar minor administrative change at the source;

(3) Requires more frequent monitoring or reporting by the permittee;

(4) Allows for a change in ownership or operational control of a source where the Department determines no other change in the permit is necessary; provided, that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the Department;

(5) Incorporates into the Part 70 permit the requirements from preconstruction review permits authorized under Chapter 2 of this title, provided such permits go through enhanced notice and comment requirements equivalent to those required for a significant modification under this chapter and meet all other requirements of this chapter that would be applicable to this change if it were subject to review as a significant modification; or

(6) Incorporates any other type of change that the Administrator has determined as part of the Department's approved permit rule to be similar to those in paragraphs (d)(1)(i) through (iv) of § 70.7 of Part 70;

(b) Administrative permit amendments for purposes of the acid rain portion of the permit shall be governed by regulations promulgated under Title IV of the Act;

(c) An administrative permit amendment shall be made by the Department in accordance with the following:

(1) The Department shall take final action on a request for an administrative permit amendment within sixty (60) days from the date of receipt of a request, and may incorporate the proposed

changes without providing notice to the public or affected States; provided, that the Department designates any permit revisions as having been made pursuant to this paragraph;

(2) The Department shall transmit a copy of the revised permit to the Administrator; and

(3) The source may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request; and

(d) The Department may, upon taking final action granting a request for an administrative permit amendment, allow coverage by the permit shield in § 302.6 for administrative permit amendments made pursuant to § 303.4(a)(6).

303.5 A permit modification shall be any revision to an operating permit that cannot be accomplished under the program's provisions for administrative permit amendments under § 303.4, and shall be governed as follows:

(a) The Department shall provide adequate, streamlined, and reasonable procedures for expeditiously processing permit modifications by adopting and complying with the procedures established in this subsection;

(b) Minor permit modification procedures shall be as follows:

(1) Criteria:

(A) Minor permit modification procedures may be used only for those permit modifications that:

(i) Do not violate any applicable requirement;

(ii) Do not involve significant changes to existing monitoring, reporting or recordkeeping requirements in the permit;

(iii) Do not require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;

(iv) Do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and which the source has assumed to avoid an applicable

requirement to which the source would otherwise be subject, which includes the following:

(a) A federally-enforceable emissions cap assumed to avoid classification as a modification under any provision of Title I of the Act; and

(b) An alternative emissions limit approved pursuant to regulations promulgated under § 112(i)(5) of the Act; and

(v) Are not modifications under any provision of Title I of the Act; and

(B) Notwithstanding §§ 303.5(b)(1)(A) and (c)(1) of this subsection, minor permit modification procedures may be used for permit modifications involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches, to the extent that such minor permit modification procedures are explicitly provided for in an applicable requirement;

(2) To use the minor permit modification procedures, a source shall submit a permit application requesting such use that shall meet the basic permit application requirements of this chapter and shall include the following:

(A) A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;

(B) A suggested draft permit;

(C) Certification by a responsible official, consistent with § 301.6, that the proposed modification meets the criteria for use of minor permit modification procedures and a request that such procedures be used; and

(D) Completed forms for the Department to use to notify the Administrator and affected States as required under § 304;

(3) Within five (5) business days of receipt of a complete minor permit modification application, the Department shall meet the Department's obligation under §§ 70.8(a)(1) and (b)(1) of Part 70 to notify the Administrator and affected States of the requested

permit modification and shall promptly send any notice required under § 304.2(b) to the Administrator;

(4) The Department shall not issue a final minor permit modification until after the Administrator's forty-five (45) day review period or until the Administrator has notified the Department that the Administrator will not object to issuance of the permit modification, whichever occurs first, although the Department can approve the permit modification prior to that time;

(5) Within ninety (90) days of the Department's receipt of a permit application under the minor permit modification procedures or fifteen (15) days after the end of the Administrator's forty-five (45) day review period under § 304.3, whichever is later, the Department shall do one of the following:

(A) Issue the minor permit modification as proposed;

(B) Deny the minor permit modification application;

(C) Determine that the requested modification does not meet the minor permit modification criteria and should be reviewed under the significant modification procedures; or

(D) Revise the draft permit modification that was suggested by the applicant pursuant to § 303.5(b)(2)(B) and transmit to the Administrator the new proposed minor permit modification as required by § 304.1;

(6) Immediately after filing a permit application meeting the requirements of these minor permit modification procedures, the source is authorized to make the change or changes proposed in the application;

(7) After the source makes the change allowed by § 303.5(b)(6), and until the Department takes any of the actions specified in §§ 303.5(b)(5)(A) through (C), the source must comply with both the applicable requirements governing the change and the proposed permit terms and conditions;

(8) During the period in § 303.5(b)(7), the source need not comply with the existing terms and conditions of the permit it seeks to modify; however, if the source fails to comply with its proposed permit terms and conditions during the time period under § 303. 5(b)(7), the existing permit terms and conditions it seeks to modify may be enforced against it; and

(9) The permit shield under § 302.6 will not extend to minor permit modifications;

(c) Pursuant to this paragraph, the Department may modify the procedure outlined in § 303.5(b) to process groups of a source's applications for certain modifications eligible for minor permit modification processing:

(1) Group processing of modifications may be used only for those permit modifications that:

(A) Meet the criteria for minor permit modification procedures under § 303.5(b)(1)(A); and

(B) Are collectively below the following threshold levels: ten percent (10%) of the emissions allowed by the permit for the emissions unit for which the change is requested, twenty percent (20%) of the applicable definition of major source in § 399.1, or five (5) tons per year, whichever is least;

(2) An application requesting the use of group processing procedures shall meet the requirements of §§ 301.4 and 301.5, and shall include the following:

(A) A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;

(B) The source's suggested draft permit;

(C) Certification by a responsible official, consistent with § 301.6, that the proposed modification meets the criteria for use of group processing procedures and a request that the procedures be used;

(D) A list of the source's other pending applications awaiting group processing, and a determination of whether the requested modification, aggregated with these other applications, equals or exceeds the threshold set under § 303.5(c)(1)(B);

(E) Certification, consistent with § 301.6, that the source has notified the Administrator of the proposed modification (notification need only contain a brief description of the requested modification); and

(F) Completed forms for the Department to use to notify the Administrator and affected States as required under § 304.

(3) On a quarterly basis or within five (5) business days of receipt of an application demonstrating that the aggregate of a source's pending applications equals or exceeds the threshold level set under § 303.5(c)(1)(B), whichever is earlier, the Department shall, in accordance with §§ 304.1(a) and 304.2(a), notify the Administrator and affected States of the requested permit modifications.

(4) The Department shall send any notice required under § 304.2(b) to the Administrator;

(5) The provisions of § 303.5(b)(4) and (5) shall apply to modifications eligible for group processing, except that the Department shall take one of the actions specified in §§ 303.5(b)(5)(A) through (D) within one hundred eighty (180) calendar days of receipt of the permit application or fifteen (15) calendar days after the end of the Administrator's forty-five (45) calendar day review period under § 304.3, whichever is later; and

(6) The provisions of §§ 303.5(b)(6) through (b)(9) shall apply to modifications eligible for group processing;

(d) Significant permit modification procedures shall be as follows:

(1) Significant permit modification procedures shall be used for applications requesting permit modifications that:

(A) Involve a significant change in existing monitoring permit terms or conditions, or constitute a relaxation of reporting or record keeping permit terms or conditions;

(B) Require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;

(C) Seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject, including the following:

(i) A federally enforceable emissions cap assumed to avoid classification as a modification under any provision of Title I; and

(ii) An alternative emissions limit approved pursuant to regulations promulgated under § 112(i)(5) of the Act;

(D) Are modifications under any provision of Title I of the Act, except those that qualify for processing as administrative permit amendments under § 303.4(a); and

(E) Do not qualify as administrative permit amendments under § 303.4(a) or minor permit modifications under § 303.5(b);

(2) Nothing in § 303.5(d) shall be construed to preclude the permittee from making changes consistent with Part 70 that would render existing permit compliance terms and conditions irrelevant;

(3) Significant permit modifications shall meet all requirements of this chapter that are applicable to permit issuance and permit renewal, including those for applications, public participation, review by affected States, and review by the Administrator;

(4) The application for a significant permit modification shall describe the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs; and

(5) The Department shall complete review of an application for a significant permit modification within nine (9) months after receipt of a complete application; and

(e) A permit modification for purposes of to the acid rain portion of the permit shall be governed by regulations promulgated under Title IV of the Act.

303.6 Each issued permit shall be subject to be reopened for cause under the following circumstances:

(a) A permit shall be reopened for cause if the following occurs:

(1) The Department or the Administrator determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms of the permit;

(2) Additional applicable requirements under the Act become applicable to the source; provided, that reopening on this ground is not required if the following occurs:

(A) The source is not a major source;

(B) The permit has a remaining term of less than three (3) years;

(C) The effective date of the requirement is later than the date on which the permit is due to expire, unless the original permit or any of its terms and conditions has been extended pursuant to § 303.3(e); or

(D) The additional applicable requirements are implemented in a general permit pursuant to § 302.4 that is applicable to the source and the source receives approval for coverage under that general permit;

(3) Additional requirements (including excess emissions requirements) become applicable to a source under the Acid Rain Program; provided, that upon approval by the Administrator excess emissions offset plans shall be deemed to be incorporated into the permit; or

(4) The Department or the Administrator determines that the permit must be revised to assure compliance by the source with applicable requirements;

(b) If the Department finds reason to believe that a permit should be reopened and modified for cause, the Department shall provide at least thirty (30) calendar days prior written notice to that effect to the source, except that the notice period can be shorter if the Department finds that an emergency exists;

(c) The notice required under paragraph (b) of this subpart shall include the following:

(1) A statement of the terms and conditions that the Department proposes to change, delete, or add to the permit;

(2) If the Department does not have sufficient information to determine the terms and conditions that must be changed, deleted, or added to the permit, the notice shall request the source to provide that information within a period of time specified in the

notice, which shall be not less than thirty (30) days except in the case of an emergency; and

(3) If the proposed reopening is to be done pursuant to § 303.6(a) the Department shall give the source an opportunity to provide evidence that the permit should not be reopened;

(d) When modifying a permit, the Department_shall follow the procedures established under § 303.1 and § 303.10 and shall alter only those portions of the permit for which cause to reopen exists;

(e) When modifying a permit, the source shall in all cases be afforded an opportunity to comment on the revised permit terms;

(f) While a reopening proceeding is pending, the source shall be entitled to the continued protection of any permit shield provided in the permit pending issuance of a modified permit unless:

(1) The Department specifically suspends the shield on the basis of a finding that the suspension is necessary to implement applicable requirements; and

(2) If a finding under paragraph (1) of this subpart applies only to certain applicable requirements or permit terms, the suspension shall extend only to those requirements or terms; and

(g) Any reopening under § 303.6(a)(2) shall be completed within eighteen (18) months after promulgation of the applicable requirements.

303.7 Each issued permit may be reopened (modifications) and revoked for cause by the Administrator under the following circumstances:

(a) If the Department receives a notice from the Administrator that the Administrator has found that cause exists to revoke, or reopen a permit, the Department shall, within ten (10) days after receipt of the notification, provide notice to the source;

(b) The notice to the source, specified in § 303.7(a), shall include a copy of the notice from the Administrator and invite the source to comment in writing on the proposed action;

(c) Within ninety (90) days following receipt of the notification from the Administrator, the Department shall issue and forward to the Administrator a proposed determination in response to the Administrator's notification;

(d) The Department may request additional time for the transmission of the determination specified in § 303.7(c), pursuant to Part 70, if such time is required to obtain a new or revised permit application or other information from the source; and

(e) Within ninety (90) days of receipt of an objection from the Administrator on his or her proposed determination, the Department shall either resolve the objection or modify or revoke the permit in accordance with the Administrator's objection.

303.8 The following procedures shall apply to revocations and terminations:

(a) The Department may terminate a permit at the request of the permittee or revoke it for cause, if the following occurs:

(1) The permitted stationary source is in violation of any term or condition of the permit and the permittee has not undertaken appropriate action (such as a schedule of compliance) to resolve the violation;

(2) The permittee has failed to disclose material facts relevant to issuance of the permit or has knowingly submitted false or misleading information to the Department;

(3) The Department finds that the permitted stationary source or activity substantially endangers public health, safety, or the environment, and that the danger cannot be removed by a modification of the terms of the permit;

(4) The permittee has failed to pay permit fees required under § 305; or

(5) The permittee has failed to pay a civil or criminal penalty imposed for violations of the permit;

(b) Upon finding that cause exists for revocation of a permit, the Department shall notify the permittee of that finding in writing, stating the reasons for the proposed revocation;

(c) Within thirty (30) days following receipt of the notice for permit revocation, the permittee may submit written comments concerning the proposed revocation and may request a hearing pursuant to § 104;

(d) If the Department makes a final determination to revoke the permit, the Department shall provide a written notice to the permittee specifying the reasons for the decision and the effective date of the revocation;

(e) A permit revocation issued under this section may be issued conditionally with a future effective date and may specify that the revocation will not take effect if the permittee satisfies the specified conditions before the effective date;

(f) A permittee may at any time apply for termination of all or a portion of its permit relating solely to operations, activities, and emissions that have been permanently discontinued at the permitted stationary source:

(1) An application for termination shall identify with specificity the permit or permit terms that relate to the discontinued operations, activities, and emissions;

(2) The Department shall act on an application for termination on this ground within ninety (90) days of receipt and shall grant the application for termination upon finding that the permit terms for which termination is sought relate solely to operations, activities, and emissions that have been permanently discontinued; and

(3) In terminating all or portions of a permit pursuant to this subsection, the Department may make appropriate orders for the submission of a final report or other information from the source to verify the complete discontinuation of the relevant operations, activities, and emissions;

(g) A source may apply for termination of its permit on the ground that its operations, activities, and emissions are fully covered by a general permit for which it has applied for and received coverage pursuant to § 302.4;

(h) The Department shall act on an application for termination on the grounds specified in § 303.8(g) within ninety (90) days of receipt and shall grant the application upon a finding that the source's operations, activities, and emissions are fully covered by a general permit;

(i) A source that has received a final revocation or termination of its permit may apply for a new permit under the procedures established in § 301.

303.9 If applicable requirements require the Department to make a case-by-case determination of an emission standard, technology requirement, work practice standard, or other requirement for a source and to include terms and conditions implementing that determination in the source's permit, the source shall include in its permit application under § 301 a proposed determination, together with the data and other information upon which the determination is to be based, and proposed terms and conditions to implement the determination, which will be reviewed in accordance with the following procedures:

(a) Upon receipt of a request from the source, the Department may meet with the source before the permit application is submitted to discuss the determination and the information required to make it; and

(b) In the event that the Department determines that the source's proposed determination and implementing terms and conditions should be revised in the draft permit, the proposed permit, or the final permit, the Department shall inform the source of the changes to be made and allow the source to comment on those changes before issuing the draft permit, proposed permit, or final permit.

303.10 Except for permit modifications qualifying for minor permit modification procedures under § 303.5(b), all permit proceedings, including initial permit issuance, significant modifications, and renewals, shall be conducted in accordance with the following procedures for public participation:

(a) After receiving a complete application for a permit, significant permit modification, or permit renewal, the Department shall, no later than sixty-one (61) calendar days before the deadline for issuing a proposed permit, significant modification, or renewal for the Administrator's review, issue a draft permit and solicit comment from the applicant, from the affected States and from the public as follows:

(1) The Department shall provide notice to the public by doing the following:

(A) Making available a public file containing a copy of all materials (including permit applications, compliance plans, permit monitoring and compliance certification reports, except for information entitled to confidential treatment under § 301.1(c)) that the applicant has submitted, a copy of the preliminary determination and draft permit or permit renewal, and a copy or summary of other materials, if any, considered in making the preliminary determination;

(B) Publishing a notice in the District of Columbia Register and using any other means necessary to assure adequate notice to the affected public of the application, the preliminary determination, the location of the public file, the procedures for submitting written comments, the procedures for requesting a hearing if the Department has not scheduled a hearing, and the date, time, and location of the public hearing; and

(C) Publishing any notice of a public hearing at least thirty (30) days in advance of the hearing;

(2) Copies of the notice required under § 303.10(a)(1)(B) shall be sent to the applicant, to the representatives of affected States designated by those States to receive the notices, and to persons on a mailing list developed by the Department, including those who request in writing to be on the list;

(b) The public notice shall establish a period of not less than thirty (30) days following publication of the notice for the submission of written comments and shall identify the affected stationary source the name and address of the applicant or permittee, the name and address of the Department's representative with responsibility for the permitting action, the activity or activities involved in the permit action, the emissions change involved in any permit modification, and the location of the public file;

(c) The applicant shall be afforded an opportunity to submit, within ten (10) business days following the close of the public comment period or the public hearing, whichever is later, a response to any comments made;

(d) The Department shall consider all comments submitted by the applicant, the public, and affected States in reaching its final determination and issuing the proposed permit, modification, or renewal for the Administrator's review;

(e) The Department shall maintain a list of all commenters and a summary of the issues raised in sufficient detail such that the Administrator may fulfill his or her obligation under § 505(b)(2) of the Act and shall make that information available in the public file and supply it to the Administrator upon request; and

(f) At the time the Department issues a proposed permit, permit modification, or permit renewal for the Administrator's review, the Department shall issue a written response to all comments submitted by affected States and all significant comments submitted by the applicant and the public. Copies of this written response shall be provided to the Administrator, affected States, and the applicant, and a copy shall be placed in the public file.

303.11 Any final action granting or denying an application for a permit, permit amendment or modification, or permit renewal shall be subject to review in the Office of Administrative Hearings upon an application filed by the applicant, any person who participated in the public comment process, or any other person who could obtain review under District law.

303.12 Except as provided under § 304.4, the opportunity for review provided for in § 303.11 shall be the exclusive means for obtaining review of any permit action.

303.13 Procedures for review shall be as follows:

(a) No application for review may be filed more than ninety (90) days following the final action on which the review is sought, unless:

(1) The grounds for review arose at a later time, in which case the application for review shall be filed within ninety (90) days of the date on which the grounds for review first arose and review shall be limited to the later-arising grounds; or

(2) The final action being challenged is the Department's failure to take final action, in which case an application for review may be filed any time before the Department denies the permit or issues the final permit; and

(b) Any application for review shall be limited to the following:

(1) Issues raised in written comments filed with the Department or during a public hearing on the proposed permit action (if the grounds on which review is sought were known at that time), except that this restriction shall not apply if the person seeking review was not afforded an advance opportunity to comment on the challenged action; and

(2) Issues that are germane and material to the relevant permit action.

Section 305, PERMIT FEES, is repealed and replaced with the following:

305 FEES

305.1 Owners or operators of Part 70 sources shall pay a permit application fee (original and renewal applications) based on the total tons of potential emissions of each regulated pollutant (for presumptive fee calculation purposes) according to the schedule in the following table:

$5,000	Total potential emissions less than 100 tons per year
$7,500	Total potential emissions equal to or greater than 100 tons per year, but less than 250 tons per year
$15,000	Total potential emissions equal to or greater than 250 tons per year, but less than 1,000 tons per year
$30,000	Total potential emissions equal to or greater than 1,000 tons per year

305.2 Owners or operators of Part 70 sources shall pay annual fees (as adjusted pursuant to the criteria set forth in § 305.6) based on the total tons of actual emissions of each regulated pollutant (for presumptive fee calculation purposes) emitted from Part 70 sources following the schedule in the following table:

$1,000	Total actual emissions less than 10 tons per year
$5,000	Total actual emissions equal to or greater than 10 tons per year, but less than 25 tons per year
$10,000	Total actual emissions equal to or greater than 25 tons per year, but less than 100 tons per year
$30,000	Total actual emissions equal to or greater than 100 tons per year

305.3 Owners or operators of Part 70 sources with total actual annual emissions greater than 100 tons per year will pay an annual fee of three hundred dollars ($300) (as adjusted pursuant to the criteria set forth in § 305.6), in addition to the fees specified under § 305.2, for each ton of annual emissions in excess of one hundred (100) tons per year.

305.4 Owners or operators of Part 70 sources subject to annual fees pursuant to § 305.2 shall pay annual fees within twelve (12) months of the date on which the source first becomes subject to the program.

305.5 Owners or operators of sources that accept federally enforceable emission limits pursuant to § 200.6 and § 300.3(c) shall pay a permit application fee (original and renewal applications) of five thousand dollars ($5,000).

305.6 The fees described in §§ 305.2 and 305.3 shall be increased each year by the percentage, if any, by which the Consumer Price Index for the most recent calendar year ending before the beginning of the year exceeds the Consumer Price Index for the calendar year 2015:

(a) The Consumer Price Index for any calendar year is the average of the Consumer Price Index for all-urban consumers published by the Department of Labor, as of the close of the twelve (12) month period ending on August 31st of each calendar year; and

(b) The revision of the Consumer Price Index which is most consistent with the Consumer Price Index for the calendar year 2015 shall be used. The Consumer Price Index for all-urban consumers for the month of August 2015 is 238.316.

305.7 Owners or operators that fail to pay a fee owed pursuant to §§ 305.1, 305.2, or 305.3 within sixty (60) days of the date that the Department issues an invoice or by September 1, whichever is earlier, unless another deadline is specified in a

permit issued pursuant to this chapter, shall pay a penalty of fifty percent (50%) of the fee amount, plus interest pursuant to § 502(b)(3)(C)(ii) of the Act.

305.8 All fees, penalties, and interest collected pursuant to this chapter shall be deposited by the Department in a special D.C. Treasury fund, subject to appropriation, to carryout Part 70 program activities solely.

Section 399, DEFINITIONS AND ABBREVIATIONS, is amended as follows:

Subsection 399.1 is amended by replacing the definition of "Regulated pollutant (for presumptive fee calculation)" to read as follows:

Regulated pollutant (for presumptive fee calculation), which is used only for purposes of § 305 - any "regulated air pollutant" except the following:

(a) Any pollutant that is a regulated air pollutant solely because it is a class I or II substance subject to a standard promulgated under or established by Title VI of the Clean Air Act;

(b) Any pollutant that is a regulated air pollutant solely because it is subject to a standard or regulation under § 112(r) of the Clean Air Act;

(c) Carbon monoxide; or

(d) Greenhouse gases, as defined in 40 CFR § 86.1818–12(a).

By adding a definition for "relevant emissions units" as follows:

Relevant emissions units - those emissions units that are subject to applicable requirements.

DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health Care Finance (DHCF or the Department), pursuant to the authority set forth in An Act to enable the District of Columbia (District) to receive federal financial assistance under Title XIX of the Social Security Act (the Act) for a medical assistance program, and for other purposes approved December 27, 1967 (81 Stat. 774; D.C. Official Code § 1-307.02 (2016 Repl. & 2019 Supp.)), and Section 6(6) of the Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code § 7-771.05(6) (2018 Repl.)), hereby gives notice of the adoption of amendments to Chapter 27 (Medicaid Reimbursement for Fee for Service Pharmacy Services) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR), by amending Section 2799 (Definitions) and adding a new Section 2715 (Pharmacists' Administration Services).

This rule will allow the District Medicaid Program to reimburse pharmacies for administration of immunizations, vaccines, and emergency anaphylaxis agents that are required to treat an anaphylactic reaction caused by an immunization or vaccine. District laws and regulations permit pharmacists to administer immunizations, vaccines, and emergency anaphylaxis agents under § 6512 of Title 17 DCMR. This rule requires pharmacists' administration services to meet seven conditions: (1) licensure and practice within the scope of practice authorized under the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201 *et seq*. (2016 Repl. & 2019 Supp.)) and Chapter 65 of Title 17 DCMR or the applicable professional practices act within the jurisdiction where services are provided; (2) certification by the D.C. Board of Pharmacy to administer immunizations and vaccines in accordance with § 6512 of Title 17 DCMR or the applicable professional practices act within the jurisdiction where services are provided; (3) the administration of immunizations, vaccines, and emergency anaphylaxis agents that are covered under the District's Medicaid State Plan for Medical Assistance ("State Plan"); (4) administration of immunizations and vaccines must be supported by and consistent with a written protocol, valid prescription, or physician standing order as required under § 6512 of Title 17 DCMR or the applicable professional practices act within the jurisdiction where services are provided; (5) administration of emergency anaphylaxis agents must be supported by and consistent with a written protocol, consistent with the requirements of § 6512 of Title 17 DCMR or the applicable professional practices act within the jurisdiction where services are provided, and must be required to treat an emergency anaphylactic reaction that is caused by the administration of an immunization or vaccine; (6) the pharmacy in which the pharmacist is located shall be a Medicaid-enrolled provider in compliance with provider screening and enrollment requirements set forth under Chapter 94 of Title 29 DCMR; (7) the pharmacist must notify the beneficiary's primary care physician if a flu vaccine or a vaccine that is not covered under the Vaccine for Children (VFC) Program is administered to a child under nineteen (19). This rule also sets forth that pharmacies may be reimbursed administration fees, and outlines separate rates for injectable products and intranasal products. In addition, the rule allows the District to update the administration fees, subject to the requirements governing the Medicaid Fee Schedule as set forth under § 988 of Title 29 DCMR.

This rulemaking amends Chapter 27 of Title 29 DCMR by incorporating the Medicaid reimbursable services that pharmacists may deliver in the District. Finally, these rules would also further amend Chapter 27 (Medicaid Reimbursement for Fee for Service Pharmacy Services) by adding new definitions to § 2799 for the following terms: administer, administration fee, anaphylaxis, emergency anaphylaxis agent, immunization, vaccination, and written protocol.

These rules correspond to an amendment to the District's State Plan for Medical Assistance (State Plan), which was approved by the U.S. Department of Health and Human Services, Centers for Medicaid and Medicare Services (CMS) on February 25, 2020. These rules became effective for services rendered on or after February 15, 2020.The District Medicaid Program estimates that the rule will have little to no impact on District or federal expenditures.

A Notice of Emergency and Proposed Rulemaking was published on February 14, 2020 in the *D.C. Register* at 67 DCR 1633. The following comment was received from the National Association of Chain Drug Stores (NACDS). The comment supports expanded access to vaccines through pharmacies by allowing them to bill for vaccine administration, which this regulation does. Accordingly, we have not changed the rule in response to the supportive comment below.

NACD applauds DHCF for identifying opportunities to expand access to affordable and quality care by allowing licensed pharmacists to bill for vaccine administration. NACD comments that the prevalence of vaccine-preventable diseases in adults remains a significant public health issue in the U.S. NACD provides data that shows low immunization uptake and immunization rates in the U.S. and the District. NACD further states that given the status of population health and the physician shortage, there is great need for Washington, DC residents to have additional healthcare destinations to receive high quality, affordable, and convenient care. NACD further explains that community pharmacists are highly qualified and well-positioned in local communities to manage and provide quality preventive care, and are oftentimes the most readily accessible healthcare provider, which should help improve health outcomes, address gaps in health care coverage, and save downstream healthcare costs.

The Director adopted these rules as final on May 28, 2020 and they shall become effective on the date of publication of this notice in the *D.C. Register*.

Chapter 27, MEDICAID REIMBURSEMENT FOR FEE FOR SERVICE PHARMACY SERVICES, of Title 29 DCMR, PUBLIC WELFARE, is amended as follows:

A new Section 2715 is added to read as follows:

2715 PHARMACISTS' ADMINISTRATION SERVICES

2715.1 Medicaid reimbursement for pharmacists' administration services, provided consistent with the requirements set forth in 42 CFR § 440.60(a) and the provisions set forth in this section, shall be limited to:

(a) Administering Medicaid-covered immunizations, vaccines, and emergency anaphylaxis agents to adults; or

(b) Administering Medicaid-covered immunizations, vaccines and emergency anaphylaxis agents that are not covered under the Vaccines For Children ("VFC") Program.

2715.2 The Department of Health Care Finance ("DHCF") shall reimburse a pharmacy when a pharmacist administers to a Medicaid beneficiary any of the following covered drugs:

(a) Immunizations;

(b) Vaccines; and

(c) Emergency anaphylaxis agents required to treat an emergency anaphylactic reaction that is caused by an immunization or vaccine.

2715.3 In order to be eligible for Medicaid reimbursement, pharmacists who provide the services described in § 2715.2 must meet the following requirements:

(a) Be licensed and practicing within the scope of practice authorized under the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201 *et seq*. (2016 Repl. & 2019 Supp.)) and Chapter 65 of Title 17 of the District of Columbia Municipal Regulations ("DCMR") or the applicable professional practices act within the jurisdiction where services are provided;

(b) Be certified by the D.C. Board of Pharmacy to administer immunizations and vaccines in accordance with § 6512 of Title 17 DCMR or the applicable professional practices act within the jurisdiction where services are provided;

(c) Administer immunizations and vaccines that are covered under the District's Medicaid State Plan for Medical Assistance ("State Plan");

(d) Administer emergency anaphylaxis agents that are:

(1) Specified in a written protocol, as required under § 6512 of Title 17 DCMR or the applicable professional practices act within the jurisdiction where services are provided, and covered under the State Plan; and

(2) Required to treat an emergency anaphylactic reaction that is caused by an immunization or vaccine;

(e) Administer immunizations and vaccines pursuant to a written protocol, valid prescription, or physician standing order as required under § 6512 of Title 17 DCMR or the applicable professional practices act within the jurisdiction where services are provided;

(f) Administer emergency anaphylactic agents if emergency anaphylactic reaction treatment is deemed appropriate by a delegating physician as set forth in a written protocol, consistent with the requirements set forth under § 6512 of Title 17 DCMR or the applicable professional practices act within the jurisdiction where services are provided;

(g) Ensure all written protocols are current and reviewed annually with the delegating physicians, consistent with the requirements set forth under § 6512 of Title 17 DCMR or the applicable professional practices act within the jurisdiction where services are provided;

(h) Practice at a pharmacy that is an enrolled DC Medicaid provider in compliance with provider screening and enrollment requirements set forth under Chapter 94 of Title 29 DCMR; and

(i) Notify the beneficiary's primary care physician if a flu vaccine or a vaccine that is not covered under the VFC Program is administered to a child under nineteen (19).

2715.4 Except for flu vaccines, Medicaid reimbursement shall not be available if an immunization or vaccine that is covered under the VFC Program is administered to a child.

2715.5 Pharmacists shall comply with the requirements of § 6512 of Title 17 DCMR, as described in § 2715.3, which are under the purview of the Department of Health in accordance with Chapter 19 of Title 22-B DCMR.

2715.6 DHCF shall reimburse administration services described in § 2715.2 to a pharmacy in which the pharmacist, described in § 2715.3, administers the services.

2715.7 DHCF shall reimburse pharmacist-administered immunizations, vaccines, and emergency anaphylaxis agents in accordance with this section as follows:

(a) DHCF shall provide separate administration fees for injectable products and for nasal products;

(b) Pharmacies receiving reimbursement for administration of immunizations, vaccines, and emergency anaphylaxis agents shall not receive the professional dispensing fee, described in §§ 2710 – 2711 of this chapter;

(c) The fees may be updated annually, and changes to the fee shall be published on the Medicaid website at www.dc-medicaid.com, subject to the requirements governing the Medicaid Fee Schedule as set forth under § 988 of Title 29 DCMR; and

(d) DHCF shall reimburse the pharmacy separately for the cost of the immunization, vaccine, and/or anaphylaxis agent, in accordance with the requirements set forth under the State Plan, Attachment 4.19-B ("Payment for Services"), Part 1, pages 2 through 3c of the State Plan and the requirements of this chapter.

Section 2799, DEFINITIONS, is amended to read as follows:

2799 DEFINITIONS

2799.1 For the purposes of this chapter, the following terms shall have the meanings ascribed:

340B Covered Entity Pharmacy - An in-house pharmacy of an entity that meets the requirements set forth in § 340B(a)(4) of the Public Health Services Act.

340B Contract Pharmacy - A pharmacy dispensing drugs on behalf of a covered entity described at § 340B(a)(4) of the Public Health Services Act.

Actual Acquisition Costs - DHCF's determination of the pharmacy providers' actual prices paid to acquire drug products marketed or sold by specific manufacturers.

Administer - The direct application of a prescription drug to the body of the beneficiary by injection, inhalation, ingestions, or any other means to the body of a patient.

Administration fee - A fee reimbursed to a pharmacy that employs or contracts a pharmacist that directly applies an immunization, vaccine, or emergency anaphylaxis agent by injection or inhalation to the body of a Medicaid beneficiary.

Anaphylaxis - A rapidly progressing, life-threatening allergic reaction.

Brand - Any registered trade name commonly used to identify a drug.

Brand name drugs - A single source or innovator multiple source drug.

Compound medication - Any prescription drug, excluding cough preparations, in which two (2) or more ingredients are extemporaneously mixed by a registered pharmacist.

Container - A light resistant receptacle designed to hold a specific dosage form which is or maybe in direct contact with the item and does not interact physically or chemically with the item or adversely affect the strength, quality or purity of the item.

Department of Health Care Finance (DHCF) - The executive department responsible for administering the Medicaid program within the District of Columbia effective October 1, 2008.

Emergency anaphylaxis agent - A medication used to treat anaphylaxis caused by the administration of an immunization or vaccine.

Federal Supply Schedule - A multiple award, multi-year federal contract for medical equipment, supplies, pharmaceutical, or service programs that is available for use by federal government agencies that complies with all federal contract laws and regulations. Pricing is negotiated based on how vendors do business with their commercial customers.

Federal Upper Limit - The upper limits of payment established by the Centers for Medicare and Medicaid Services, consistent with the requirements set forth under 42 CFR §§ 447.512 – 447.516.

Generic drug - A drug that is produced and distributed without patent protection.

Immunization - The act of inducing antibody formation, thus leading to immunity.

Investigational drug - A drug that is under study but does not have permission from Food and Drug Administration to be legally marketed and sold in the U.S.

Legend drug - A drug that can only be dispensed to the public with a prescription.

Medicaid Drug Rebate Program - This program was created pursuant to the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508; 104 Stat. 1388 (OBRA '90). The Drug Rebate program requires a drug manufacturer to enter into and have in effect a national rebate agreement with the Secretary of the Department of Health and Human Services (HHS) for states to receive Federal funding for outpatient drugs dispensed to Medicaid patients.

Maintenance narcotic medication - A narcotic medication that has been dispensed in quantities sufficient for thirty (30) days or more for pain management therapy.

Multiple source drug - A drug marketed or sold by two (2) or more manufacturers or labelers.

Pharmacy benefit manager - A company under contract with DHCF to manage pharmacy networks, provide drug utilization reviews, outcome management and disease management.

Vaccination - Administration of any antigen in order to induce immunity; is not synonymous with immunization since vaccination does not imply success.

Written protocol - A specific written plan for a course of medical treatment containing a written set of specific directions created by the physician for one or more patients, consistent with requirements set forth under Chapter 65 of Title 17 DCMR.

X-DEA number - A unique identification number (x-number) assigned by the Drug Enforcement Administration under the Drug Addiction Treatment Act of 2000 (Pub. L. 106-310; 114 Stat. 1101) in order to prescribe or dispense buprenorphine/naloxone drug preparations.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF FINAL RULEMAKING

RM3-2018-01, IN THE MATTER OF THE INVESTIGATION INTO THE PUBLIC SERVICE COMMISSION'S RULES GOVERNING ENERGY METER LOCATIONS,

1. The Public Service Commission of the District of Columbia (Commission), pursuant to its authority under D.C. Official Code §§ 2-505 (2016 Repl.) and 34-802 (2019 Repl.), hereby gives notice of its final rulemaking adopting Sections 301 and 399.1 of Chapter 3 (Consumer Rights and Responsibilities) of Title 15 (Public Utilities and Cable Television) of the District of Columbia Municipal Regulations (DCMR), commonly referred to as the Consumer Rights and Responsibilities. Among other requirements, this chapter sets forth standards for energy meter locations.

2. On March 9, 2018, the Commission published a Notice of Proposed Rulemaking (NOPR) revising Sections 301 and 399.1 of the Consumer Rights and Responsibilities to clarify its rules for energy meters replacement and relocation.[1] On December 27, 2019, the Commission published a Second NOPR, adding additional provisions to its first NOPR in response to Washington Gas Light Company's January 2, 2019, filing in *Formal Case No. 1142*, Commitment No. 70.[2] On March 6, 2020, the Commission published a Third NOPR, in which Sections 301.2, applicable to natural gas meters and equipment, and 399.1, were revised in response to comments filed on this matter by the Washington Gas Light Company.[3] On April 4, 2020, the Potomac Electric Power Company (Pepco) filed comments, suggesting minor grammatical edits to Sections 301.1 (d) and 301.1 (e). This Notice of Final Rulemaking incorporates Pepco's suggestions.

3. The Commission approved the Final Rules by Order No. 20351 at the Commission's May 20, 2020, open meeting, with the rules becoming effective upon publication of this notice in the *D.C. Register*.

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[1] 65 DCR 2477-2482 (March 9, 2018).

[2] 65 DCR 6587-16592 (December 27, 2019); *Formal Case No. 1142*, *In the Matter of the Merger of AltaGas Ltd. and WGL Holdings, Inc*., Washington Gas Light Company, Commitment No. 70 Compliance Filing, filed January 2, 2019.

[3] 67 DCR 2608-2613 (March 6, 2020).

Chapter 3, CONSUMER RIGHTS AND RESPONSIBILITIES, of Title 15 DCMR, PUBLIC UTILITIES AND CABLE TELEVISION, is amended as follows:

Section 301, ENERGY METER LOCATIONS, is amended to read as follows:

301 LOCATION OF ENERGY SERVICE METERS AND RELATED EQUIPMENT

301.1 **Electric Meters and Equipment**

(a) Electric Meters shall be located outdoors whenever possible unless the relocation of the Meter will result in an unsafe condition.

(b) When an indoor electric Meter installation is replaced due to modifications in electric service equipment by the Electric Utility, the electric Meter shall be relocated outdoors at no expense to the Customer. If the electric Meter relocation is for the convenience of the Customer, it shall be at the Customer's expense and calculated in accordance with the Electric Utility's approved Tariff for this service. The cost of connecting the Meter to the Customer's electric service panel shall remain with the Customer.

(c) Customers must grant access to the electric Meter for maintenance or service Disconnection within the provisions of Subsection 310.1. If a Customer refuses to grant access, the utility may relocate the electric Meter to an accessible location and the Customer shall bear the relocation cost.

(d) The Electric Utility shall provide Customers with a fifteen (15) day notice prior to replacing or relocating electric Meters located on the Customer's premise or property. No such notice is required in emergencies.

(e) The notice required by Subsection 301.1(d) shall inform the Customer that the Electric Utility proposes to relocate or replace the electric Meter, the planned new location, and how to contact the Electric Utility to provide supplemental information, such as the building's historic status or any private property line limitations. The notice shall include contact information for the Commission and OPC.

(f) The Electric Utility shall develop and implement detailed protocols for determining the location of electric Meters, consistent with these rules, and shall inform Customers of these protocols.

301.2 **Gas Meters and Natural Gas Equipment**

(a) Gas Meters, Natural Gas Service Regulators, and Natural Gas Equipment shall be located outdoors whenever possible unless the relocation will result in an unsafe condition or as otherwise authorized by Subsection 301.2.

(b) When new Natural Gas Service Lines are installed, or existing ones are replaced, gas Meters shall be placed outdoors at no expense to the Customer. If the gas Meter relocation is for the convenience of the Customer, it shall be at the Customer's expense and calculated in accordance with the Natural Gas Utility's approved Tariff for this service.

(c) Customers must grant access to the gas Meter for maintenance or service Disconnection within the provisions of Subsection 310.1. If a Customer refuses to grant access, the utility may relocate the gas Meter to an accessible location and the Customer shall bear the relocation cost.

(d) The Natural Gas Utility shall provide Customers with a fifteen (15) day notice prior to replacing or relocating Natural Gas Equipment located on the Customer's premise or property. No such notice is required in emergencies.

(e) The notice required by Subsection 301.2(d) shall inform the Customer of the Natural Gas Equipment that the Natural Gas Utility proposes to replace or relocate, the planned new location, and how to contact the Natural Gas Utility to provide supplemental information, such as the building's historic status or any private property line limitations. The notice shall include contact information for the Commission and OPC.

(f) The Natural Gas Utility shall determine the location of indoor or outdoor Natural Gas Equipment, subject to the provisions of this Section, all applicable pipeline safety industry practices, federal and District of Columbia laws and regulations, including the Design Guideline for Utility Meters issued by the District of Columbia Historic Preservation Review Board, and any applicable District laws and regulations.

(g) Where exterior gas Meters, Natural Gas Service Regulators, Shut-Off Valves or other Natural Gas Equipment cannot be installed in front of the Customer's premises, the Natural Gas Utility, after consultation with the Customer, shall employ best efforts to avoid installing Natural Gas Equipment on the principal street façades (of building/dwelling) and to place the Natural Gas Equipment to the rear and secondary façades (side of building/dwelling) of the Customer's premises. If it is necessary and safe to place a gas Meter on a rear or secondary façade (side of building/dwelling) wall, the Natural Gas Utility shall select a location that provides reasonable access to the gas Meter. The Natural Gas Utility shall employ best efforts to preserve the integrity and appearance of the building and its façades.

(h) When installing gas Meters, Natural Gas Service Regulators, Shut-Off Valves or other Natural Gas Equipment outdoors, the Natural Gas Utility shall:

(1) Locate all Shut-Off Valves outdoors in a readily accessible location;

(2) Consider the potential damage to the Natural Gas Equipment;

(3) Select a location that accommodates access to gas Meter reading, inspection, repairs, testing, and safe changing and operation of the natural gas Shut-Off Valves, and service Disconnections;

(4) Consider an outdoor location consistent with the adjoining buildings and Natural Gas Equipment locations;

(5) Consider, to the extent feasible and safe, locating the Natural Gas Equipment behind existing landscaping to make it least visible from the street;

(6) Consult with Customers prior to conducting outdoor gas Meter relocation or replacement on the potential impact of the building's aesthetics;

(7) When safe to do so, install outdoor gas Meters and Natural Gas Service Regulators above ground in a protected location adjacent to the building served, and as close as possible to the point where the Natural Gas Service Line connects to the Natural Gas Main Line;

(8) Determine the location of Natural Gas Service Regulators outdoors, when safe to do so. Otherwise, Natural Gas Service Regulators shall be located indoors as near as practicable to the point where the Natural Gas Service Line enters the building and shall be vented to the outside;

(9) Avoid placing Natural Gas Equipment in front of windows or other building openings that may directly obstruct emergency fire exits and building entryways; and

(10) Place Natural Gas Equipment under exterior stairways only when deemed safe by the Natural Gas Utility and when no other safe location is available.

(i) At the Customer's request and only when deemed safe to do so, the Natural Gas Utility may locate the gas Meter and associated gas piping up to five (5) feet in length from the Natural Gas Utility's preferred installation location at no cost to the Customer. If a Customer requests an installation location that is safe to complete but is further than five (5) feet in length from the Natural Gas Utility's preferred installation location, then the Customer shall be responsible for the costs associated with the additional

piping beyond five (5) feet from the Natural Gas Utility's preferred location to the location selected by the Customer. The cost shall be calculated in accordance with the Commission-approved Tariff for this service.

(j) The placement of gas Meters indoors shall be considered only when one or more of these circumstances are present:

(1) The Natural Gas Service Line pressure is less than ten (10) pounds per square inch gauge;

(2) The gas Meter could not be installed safely on the private property surrounding the building and would have to be placed in an area that would violate traffic laws or interfere with the public right-of-way;

(3) A Natural Gas Utility determines that a gas Meter and associated Natural Gas equipment is subject to a high risk of damage based on the Natural Gas Utility's prior experience; and

(4) Protection from ambient temperatures is necessary to avoid gas Meter freeze-ups, flooding or icing, or other extreme weather conditions that could impact the safe and accurate operation of the gas Meter.

(k) If gas Meters are placed indoors, the Natural Gas Utility shall ensure:

(1) Indoor gas Meters shall be supported in such a manner as to be as free as possible from damage that will render them unsafe or inaccurate;

(2) Gas Meters are located in a ventilated place not less than three (3) feet away from a source of ignition or source of heat which may damage the gas Meter; and

(3) The Customer is informed in writing of any safety measures that the Customer needs to adhere to, including but not limited to, ventilation requirements and proximity of ignition source or heat to the gas Meter and Natural Gas Equipment.

(l) All gas Meters, Natural Gas Service Regulators, Shut-Off Valves, and Natural Gas Equipment installed indoors at multi-family buildings, commercial buildings, or multiple connected residential dwellings shall be inspected by the Natural Gas Utility at intervals not exceeding twenty-seven (27) months, but at least once every two (2) calendar years, beginning July 1, 2020.

(m) The Natural Gas Utility shall develop and implement detailed protocols for determining the location of Natural Gas Equipment, consistent with these rules, and shall inform Customers of these protocols.

Section 399, DEFINITIONS, is amended to add the following definitions:

Natural Gas Service Regulator: the device on a service line that controls the pressure of natural gas delivered from a higher pressure to the pressure provided to the Customer. A service regulator may serve one Customer or multiple Customers through a gas Meter header or manifold.

Natural Gas Main Line: a distribution line that serves as a common source of supply for more than one service line.

Natural Gas Service Line: a distribution line that transports gas from a common source of supply to an individual Customer, to two adjacent or adjoining residential or small commercial Customers, or to multiple residential or small commercial Customers served through a gas Meter header or manifold. A service line ends at the outlet of the Customer gas Meter or at the connection to a Customer's piping, whichever is further downstream, or at the connection to Customer piping if there is no gas Meter.

Shut-Off Valve: a small local valve used to control the flow of natural gas and is installed upstream of the gas Meter.

Natural Gas Equipment: the term includes gas Meters, Natural Gas Service Regulators, Shut-Off Valves, and any other gas equipment associated with the delivery of gas to the Customer.