

I Mina'trentai Sais Na Liheslaturan Guåhan  
BILL STATUS

BILL NO.	SPONSOR	TITLE	DATE INTRODUCED	DATE REFERRED	CMTE REFERRED	PUBLIC HEARING DATE	DATE COMMITTEE REPORT FILED	FISCAL NOTES	NOTES
361-36 (COR)	Sabina Flores Perez	AN ACT TO ADD A NEW ARTICLE 8 TO CHAPTER 1 OF TITLE 22, GUAM ADMINISTRATIVE RULES AND REGULATIONS, RELATIVE TO ADOPTING NEW SOURCE REVIEW RULE REQUIREMENTS (NSRR) FOR NEW AND MODIFIED MAJOR SOURCES IN SULFURE DIOXIDE (SO2) NONATTAINMENT AREAS TRANSMITTED BY THE GUAM ENVIRONMENTAL PROTECTION AGENCY.	11/15/22 11:26 a.m.	11/18/22	Committee on Environment, Revenue and Taxation, Labor, Procurement, and Statistics, Research, and Planning	11/29/22 1:30 p.m.	12/9/22 3:18 p.m.	Request: 11/18/22  Waiver: 11/30/22	
	SESSION DATE	TITLE	DATE PASSED	TRANSMITTED	DUE DATE	PUBLIC LAW NO.	DATE SIGNED	NOTES	
	12/2/22	AN ACT TO ADD A NEW ARTICLE 8 TO CHAPTER 1 OF TITLE 22, GUAM ADMINISTRATIVE RULES AND REGULATIONS, RELATIVE TO ADOPTING THE NEW SOURCE REVIEW RULE (NSRR) FOR NEW AND MODIFIED MAJOR SOURCES IN SULFURE DIOXIDE (SO2) NONATTAINMENT AREAS TRANSMITTED BY THE GUAM ENVIRONMENTAL PROTECTION AGENCY.	12/16/22	12/16/22	12/28/22	36-140	12/28/22	Received: 12/29/22 Mess and Comm. Doc. No. 36GL-22-2943	

LOURDES A. LEON GUERRERO  
GOVERNOR



JOSHUA F. TENORIO  
LT. GOVERNOR

UFISINAN I MAGA'HÅGAN GUÅHAN  
OFFICE OF THE GOVERNOR OF GUAM

Transmitted via email to: [speaker@guamlegislature.org](mailto:speaker@guamlegislature.org)

December 28, 2022

**HONORABLE THERESE M. TERLAJE**, *Speaker*  
*I Mina'trentai Sais Na Liheslaturan Guåhan*  
36<sup>th</sup> Guam Legislature  
Guam Congress Building  
163 Chalan Santo Papa  
Hagåtña, Guam 96910

Doc Type: 36GL-22-2943  
OFFICE OF THE SPEAKER  
THERESE M. TERLAJE

-12- 28 2022

Time: 6:04pm  
Received: [Signature]

**Re: SUBSTITUTE BILL NO. 361-36 (COR) - AN ACT TO ADD A NEW ARTICLE 8 TO CHAPTER 1 OF TITLE 22, GUAM ADMINISTRATIVE RULES AND REGULATIONS, RELATIVE TO ADOPTING THE NEW SOURCE REVIEW RULE (NSRR) FOR NEW AND MODIFIED MAJOR SOURCES IN SULFURE DIOXIDE (SO2) NONATTAINMENT AREAS TRANSMITTED BY THE GUAM ENVIRONMENTAL PROTECTION AGENCY**

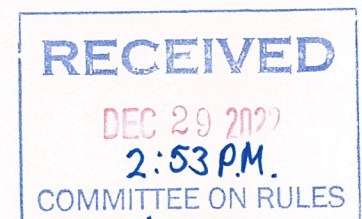
*Hafa Adai* Madame Speaker,

Pursuant to the Organic Act of Guam, I sign Substitute Bill No. 361-36 into law as **Public Law 36-140** to adopt rules relating to New Source Review ("NSR") rule for New and Modified Major Sources in Sulfur Dioxide ("SO<sub>2</sub>") Nonattainment Areas, as transmitted by Guam Environmental Protection Agency ("GEPA"). In signing this bill, I acknowledge GEPA filed its proposed rules and agency record with my Office, adhering to Guam's rule-making procedure laws. On September 22, 2022, I approved GEPA's proposed NSR rules as to policy.

Nonattainment NSR rules are technical and complex, and successful implementation of these rules requires dedication and attention, to ensure the federal Clean Air Act's purpose of promoting the public health is achieved. GEPA has dedicated considerable efforts and resources in drafting the NSR rules for SO<sub>2</sub> nonattainment areas in Guam. I thank GEPA officials and staff for their hard work and diligence in accomplishing the adoption of the island's first set of NSR permit rules.

*Senseremente,*

[Signature]  
**LOURDES A. LEON GUERRERO**  
*Maga'hågan Guåhan*  
Governor of Guam



Enclosure: Substitute Bill No. 361-36 (COR) nka P.L. No. 36-140

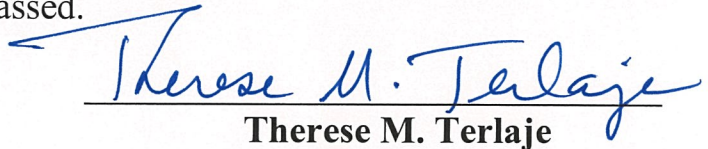
cc via email: *Honorable* Joshua F. Tenorio, *Sigundo* Maga'låhen Guåhan, Lt. Governor of Guam  
Compiler of Laws




***I MINA'TRENTAI SAIS NA LIHESLATURAN GUÅHAN***  
**2022 (SECOND) Regular Session**

**CERTIFICATION OF PASSAGE OF AN ACT TO *I MAGA'HÅGAN GUÅHAN***

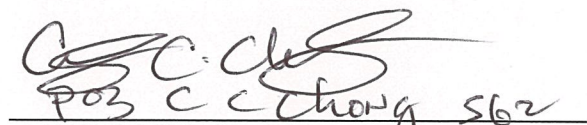
This is to certify that **Substitute Bill No. 361-36 (COR), "AN ACT TO ADD A NEW ARTICLE 8 TO CHAPTER 1 OF TITLE 22, GUAM ADMINISTRATIVE RULES AND REGULATIONS, RELATIVE TO ADOPTING THE NEW SOURCE REVIEW RULE (NSRR) FOR NEW AND MODIFIED MAJOR SOURCES IN SULFURE DIOXIDE (SO<sub>2</sub>) NONATTAINMENT AREAS TRANSMITTED BY THE GUAM ENVIRONMENTAL PROTECTION AGENCY,"** was on the 16<sup>th</sup> day of December 2022, duly and regularly passed.

  
**Therese M. Terlaje**  
**Speaker**

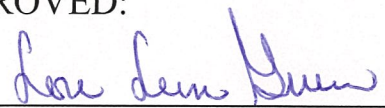
Attested:

  
**Amanda L. Shelton**  
**Legislative Secretary**

-----  
This Act was received by *I Maga'hågan Guåhan* this 16<sup>th</sup> day of Dec,  
2022, at 10:06 o'clock P.M.

  
**Assistant Staff Officer**  
***Maga'håga's Office***

APPROVED:

  
**Lourdes A. Leon Guerrero**  
***I Maga'hågan Guåhan***

Date: 12/28/2022

Public Law No. 36-140

***I MINA'TRENTAI SAIS NA LIHESLATURAN GUÅHAN***  
**2022 (SECOND) Regular Session**

**Bill No. 361-36 (COR)**

As substituted on the Floor.

Introduced by:

Sabina Flores Perez  
V. Anthony Ada  
Frank Blas Jr.  
Joanne Brown  
Christopher M. Dueñas  
James C. Moylan  
Tina Rose Muña Barnes  
Telena Cruz Nelson  
Clynton E. Ridgell  
Joe S. San Agustin  
Amanda L. Shelton  
Telo T. Taitague  
Jose “Pedo” Terlaje  
Therese M. Terlaje  
Mary Camacho Torres

**AN ACT TO *ADD* A NEW ARTICLE 8 TO CHAPTER 1 OF  
TITLE 22, GUAM ADMINISTRATIVE RULES AND  
REGULATIONS, RELATIVE TO ADOPTING THE NEW  
SOURCE REVIEW RULE (NSRR) FOR NEW AND  
MODIFIED MAJOR SOURCES IN SULFURE DIOXIDE  
(SO<sub>2</sub>) NONATTAINMENT AREAS TRANSMITTED BY  
THE GUAM ENVIRONMENTAL PROTECTION  
AGENCY.**

**BE IT ENACTED BY THE PEOPLE OF GUAM:**

**Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan* finds  
that the Clean Air Act requires compliance with National Ambient Air Quality  
Standards (NAAQS) for criteria air pollutants which currently includes sulfur

dioxide (SO<sub>2</sub>), carbon monoxide (CO), nitrogen dioxide (NO<sub>2</sub>), Ozone (O<sub>3</sub>), Lead (Pb), and Particulate Matter (PM<sub>2.5</sub> and PM<sub>10</sub>). Furthermore, those areas not in compliance with and not attaining NAAQS levels are designated by the United States Environmental Protection Agency (USEPA) as nonattainment areas for the particular pollutant(s).

*I Liheslatura* further finds that USEPA designated two (2) nonattainment areas on Guam. The Piti-Cabras area of Guam was designated as not attaining the 2010 SO<sub>2</sub> Primary NAAQS on January 9, 2018. The area of nonattainment is a 6.074-kilometer radius area from a point between Units 1 and 2 and Units 3 and 4 of the Guam Power Authority (GPA) Cabras Station. The other nonattainment area is a 3.5 kilometer or 2.2-mile radius area from the Tanguisson power plant, although the plant is no longer operating.

*I Liheslatura* further finds that the Guam Environmental Protection Agency (GEPA) must prepare a State Implementation Plan (SIP) revision to show attainment of the standard within five (5) years of the effective designation date. Furthermore, the adoption of the proposed New Source Review Rule (NSRR) is part of the requirements of the SIP Revision.

*I Liheslatura* finds, as required by Part D of the Clean Air Act, that Guam is required to show that it will be in attainment by the year 2023. To this end, GEPA has completed the baseline emissions inventory for 2020. In 2020, the emission inventory for SO<sub>2</sub> for Guam was 9197.04 tons. The estimated emissions inventory for SO<sub>2</sub> in 2023 is 3.336 tons - a reduction of 9,193.704 tons per year of SO<sub>2</sub>. Once the Guam Power Authority has commissioned the new combined cycle power plant and decommissioned Cabras 1 and 2, Guam will be in full attainment for the 2010 SO<sub>2</sub> NAAQS.

*I Liheslatura* finds that Guam does not have local rules or regulations for the review of new major sources and major source modifications in nonattainment areas.

1 Currently, USEPA conducts all reviews of new major sources or modifications to  
2 major sources in attainment and nonattainment areas. Guam EPA administers an  
3 approved air pollution control program under 40 CFR Part 69. As a requirement of  
4 Part D of the Clean Air Act, Guam is required to promulgate and adopt a new local  
5 SO<sub>2</sub> major source or major source modification nonattainment NSRR.

6 *I Liheslatura* further finds that the NSRR will not increase the cost to the  
7 regulated community, but it will shift the application payments from USEPA to  
8 Guam EPA. Upon adoption of the NSRR, Guam EPA will accept all payments for  
9 new major source and major modifications to major sources in SO<sub>2</sub> nonattainment  
10 areas in Guam.

11 *I Liheslaturan Guåhan*, therefore, intends to adopt these proposed rules and  
12 regulations in order to meet the requirements of Part D of the Clean Air Act and  
13 align the Guam EPA regulations with federal regulations. Furthermore, these rules  
14 and regulations would administratively satisfy the following: (1) compliance with  
15 the USEPA's Clean Air Act Part D requirements for Nonattainment Areas for the  
16 2010 SO<sub>2</sub> NAAQS; (2) adherence to the Three Thousand Seven Hundred Fifty  
17 Dollar (\$3,750) application fee for new major nonattainment area (NAA) sources  
18 and the One Thousand Dollar (\$1,000) fee for significant modifications to a major  
19 NAA source in accordance with 22 GAR § 1423(c)(1), (d), and (f) respectively; and  
20 (3) avoid sanctions for failing to submit an attainment plan for the 2010 SO<sub>2</sub>  
21 NAAQS.

22 **Section 2.** A new Article 8 is hereby *added* to Chapter 1 of Title 22, Guam  
23 Administrative Rules and Regulations, to read:

24 **“ARTICLE 8**

25 **GUAM AIR POLLUTION CONTROL STANDARDS AND REGULATIONS**  
26 **NEW SOURCE REVIEW REQUIREMENTS FOR NEW AND MODIFIED**

**MAJOR SOURCES IN SO<sub>2</sub> NONATTAINMENT AREAS ADOPTED ON  
OCTOBER 17, 2022**

- § 1801. Applicability Procedures.
- § 1801.1. Preconstruction Review Requirements.
- § 1801.2. Nonattainment Major New Source Review (NSR) Permit Requirement.
- § 1801.3. Emission Calculation Requirements to Determine New Source Review (NSR) Applicability.
- § 1801.4. Major Sources with Plant-Wide Applicability Limitations.
- § 1801.5. Projects That Rely on a Projected Actual Emissions Test.
- § 1801.6. Secondary Emissions.
- § 1801.7. Stationary Sources.
- § 1801.8. Environmental Protection Agency Determination.
- § 1802. Definitions.
- § 1803. Application Requirements.
- § 1803.1. Application Submittal.
- § 1803.2. Application Content.
- § 1803.3. Lowest Achievable Emission Rate (LAER).
- § 1803.4. Certification of Compliance.
- § 1803.5. Analysis of Alternatives.
- § 1803.6. Application Fees.
- § 1804. Emissions Offsets.
- § 1804.1. Offset Requirements.
- § 1804.2. Timing.
- § 1804.3. Quantity.
- § 1804.4. Emission Reduction Requirements.
- § 1804.5. Restrictions on Trading Pollutants.

1	§ 1805.	Administrative Requirements.
2	§ 1805.1.	Ambient Air Quality Standards.
3	§ 1805.2.	Air Quality Models.
4	§ 1805.3.	Stack Height Procedures.
5	§ 1806.	Nonattainment Major New Source Review (NSR) Permit-
6		Decision.
7	§ 1806.1.	Preliminary Decision.
8	§ 1806.2.	Nonattainment Major New Source Review (NSR) Permit-
9		Preliminary Decision Requirements.
10	§ 1806.3.	Nonattainment Major New Source Review (NSR) Permit
11		Contents.
12	§ 1806.4.	Nonattainment Major New Source Review (NSR) Permit-Final
13		Decision.
14	§ 1806.5.	Ongoing Permit Requirements.
15	§ 1806.6.	Technology Clearinghouse.
16	§ 1807.	Source Obligations.
17	§ 1807.1.	Enforcement.
18	§ 1807.2.	Termination.
19	§ 1807.3.	Compliance.
20	§ 1807.4.	Relaxation in Enforceable Limitations.
21	§ 1808.	Public Participation.
22	§ 1809.	Plant-Wide Applicability Limits (PAL).
23	§ 1810.	Invalidation.
24	§ 1811.	Effective Date for Referenced Federal Regulations.
25	<b>§ 1801.</b>	<b>Applicability Procedures.</b>
26	<b>§ 1801.1.</b>	<b>Preconstruction Review Requirements.</b>



1 (a) The preconstruction review requirements of this rule apply to the  
2 proposed construction of any new major stationary source or major modification in  
3 Guam that is major for a nonattainment pollutant, if the stationary source or  
4 modification is located anywhere in the designated nonattainment area, except:

5 (1) as provided in §1809 of this rule; and

6 (2) this rule's provisions requiring the application of the lowest  
7 achievable emission rate (LAER) and offsets do not apply for purposes of the  
8 1971 sulfur dioxide (SO<sub>2</sub>) National Ambient Air Quality Standards (NAAQS)  
9 with respect to electric generating units in the Piti nonattainment area for the  
10 1971 SO<sub>2</sub> NAAQS, while this rule's provisions requiring the application of  
11 LAER and offsets do apply to such units for purposes of the 2010 SO<sub>2</sub>  
12 NAAQS.

13 (b) Sources subject to this rule may also be subject to other Guam  
14 Environmental Protection Agency (GEPA) rules and regulations. For purposes of  
15 the implementation and enforcement of this rule, the provisions and requirements of  
16 this rule, including, but not limited to, the requirements for obtaining a  
17 nonattainment major NSR permit, application submittal and content, conditional  
18 approval, public participation, and granting a nonattainment major New Source  
19 Review (NSR) permit, shall take precedence over any other such provisions and  
20 requirements in other GEPA rules and regulations. To the extent that other GEPA  
21 rules or regulations may affect the stringency or applicability of this rule, such other  
22 rules and regulations shall not apply for purposes of the implementation or  
23 enforcement of this rule.

24 **§ 1801.2. Nonattainment Major New Source Review (NSR) Permit**  
25 **Requirement.**

26 No new major stationary source or major modification to which the  
27 requirements of this rule apply shall begin actual construction without first obtaining

1 a nonattainment major NSR permit from the reviewing authority, pursuant to this  
2 rule.

3 **§ 1801.3. Emission Calculation Requirements to Determine New**  
4 **Source Review (NSR) Applicability.**

5 (a) New Major Stationary Sources. The definition of Major Stationary  
6 Source as incorporated by reference in § 1802 shall be used to determine if a new or  
7 modified stationary source is a new major stationary source.

8 (b) Major Modifications. The provisions set out in Subsections (1) through  
9 (5) of this Section shall be used to determine if a proposed project will result in a  
10 major modification. These provisions shall not be used to determine the quantity of  
11 offsets required for a project subject to the requirements of this rule.

12 (1) Except as otherwise provided in § 1801.4, a project is a major  
13 modification for a nonattainment pollutant if it causes two (2) types of  
14 emissions increases: a significant emissions increase and a significant net  
15 emissions increase. The project is not a major modification if it does not cause  
16 a significant emissions increase. If the project causes a significant emissions  
17 increase, then the project is a major modification only if it also results in a  
18 significant net emissions increase.

19 (2) The procedure for calculating (before beginning actual  
20 construction) whether a significant emissions increase will occur depends  
21 upon the type of emissions units being added or modified as part of the project,  
22 according to Subsections (3) through (5) of this Section. The procedure for  
23 calculating (before beginning actual construction) whether a significant net  
24 emissions increase will occur at the major stationary source is contained in  
25 the definition of *net emissions increase*. Regardless of any such  
26 preconstruction projections, a major modification results if the project causes  
27 a significant emissions increase and a significant net emissions increase.

(3) Actual-to-Projected-Actual Applicability Test for Projects that Only Involve Existing Emissions Units. A significant emissions increase of a nonattainment pollutant is projected to occur if the sum of the difference between the projected actual emissions and the baseline actual emissions, for each existing emissions unit, equals or exceeds the significant amount for that pollutant.

(4) Actual-to-Potential Test for Projects that Only Involve Construction of a New Emissions Unit(s). A significant emissions increase of a nonattainment pollutant is projected to occur if the sum of the difference between the potential to emit from each new emissions unit following completion of the project and the baseline actual emissions of these units before the project equals or exceeds the significant amount for that pollutant.

(5) Hybrid Test for Projects that Involve Multiple Types of Emissions Units. A significant emissions increase of a nonattainment pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in Subsections (3) or (4) of this Section, as applicable, with respect to each emissions unit, equals or exceeds the significant amount for that pollutant.

**§ 1801.4. Major Sources with Plant-Wide Applicability Limitations (PAL).**

For any major stationary source with a Plant-Wide Applicability Limitation (PAL) permit for a nonattainment pollutant, the major stationary source shall comply with the requirements in § 1809 of this rule.

**§ 1801.5. Projects That Rely on a Projected Actual Emissions Test.**

Except as otherwise provided in Subsection (g)(3) of this Section, the provisions of this Section shall apply with respect to any nonattainment pollutant that is emitted from projects at existing emissions units located at a major stationary

1 source, other than a source with a PAL permit, when there is a reasonable possibility,  
2 within the meaning of Subsection (g) of this Section, that a project that is not a part  
3 of a major modification may result in a significant emissions increase of such  
4 pollutant, and the owner or operator elects to use the method specified in paragraphs  
5 (B)(1) through (B)(3) of the definition of *projected actual emissions* to calculate  
6 *Projected Actual Emissions* [40 CFR 51.165(a)(xxviii)(A)].

7 (a) Before beginning actual construction of the project, the owner or  
8 operator shall document and maintain a record of the following information:

9 (1) a description of the project;

10 (2) identification of the emissions unit(s) whose emissions of  
11 a regulated NSR pollutant could be affected by the project; and

12 (3) a description of the applicability test used to determine that  
13 the project is not a major modification for any regulated NSR pollutant,  
14 including the baseline actual emissions, the *Projected Actual*  
15 *Emissions*, the amount of emissions excluded under paragraph (B)(3)  
16 of the definition of *projected actual emissions* [40 CFR  
17 51.165(a)(xxviii)(A)], and an explanation for why such amount was  
18 excluded, and any netting calculations, if applicable.

19 (b) If the emissions unit is an existing emissions unit, before  
20 beginning actual construction, the owner or operator shall provide a copy of  
21 the information set out in Subsection (a) of this Section to the GEPA  
22 Administrator. The owner or operator shall be subject to the requirements of  
23 other GEPA rules and regulations and other applicable requirements.

24 (c) The owner or operator shall monitor the emissions of any  
25 regulated NSR pollutant that could increase as a result of the project and that  
26 are emitted by any emissions unit identified in Subsection (a)(2) of this  
27 Section; and calculate and maintain a record of the annual emissions, in tons

1 per year (tpy), on a calendar year basis as long as the emission unit is in  
2 operation and has not been decommissioned.

3 (d) If the emissions unit is an existing electric utility steam  
4 generating unit, the owner or operator shall submit a report to the GEPA  
5 Administrator within sixty (60) days after the end of each calendar year during  
6 which records must be generated under Subsection (c) of this Section, setting  
7 out the unit's annual emissions during the calendar year that preceded  
8 submission of the report.

9 (e) If the emissions unit is an existing emissions unit other than an  
10 electric utility steam generating unit, the owner or operator shall submit a  
11 report to the GEPA Administrator if the annual emissions, in tpy, from the  
12 project identified in Subsection (a)(2) of this Section exceed the baseline  
13 actual emissions by a significant amount for that regulated NSR pollutant, and  
14 if such emissions differ from the Projected Actual Emissions (prior to  
15 exclusion of the amount of emissions specified under paragraph (B)(3) of the  
16 definition of *Projected Actual Emissions* [40 CFR 51.165(a)(xxviii)(A)], as  
17 documented and maintained pursuant to Subsection (a)(3) of this Section.  
18 Such report shall be submitted to the GEPA Administrator within sixty (60)  
19 days after the end of such year. The report shall contain the following:

20 (1) the name, address, and telephone number of the  
21 major stationary source;

22 (2) the annual emissions, as calculated pursuant to  
23 Subsection (c) of this Section; and

24 (3) any other information that the owner or operator  
25 wishes to include in the report (e.g., an explanation as to why  
26 the emissions differ from the preconstruction projection).

1           (f) The owner or operator of the source shall make the information  
2 required to be documented and maintained pursuant to this Section available  
3 for review upon a request for inspection by the GEPA Administrator or the  
4 general public pursuant to the requirements contained in § 1207 of this  
5 Chapter.

6           (g) A “reasonable possibility” under this Section occurs when the  
7 owner or operator calculates the project to result in either:

8                   (1) a projected actual emissions increase of at least fifty  
9 percent (50%) of the amount that is a “significant emissions  
10 increase,” as defined in this rule (without reference to the amount  
11 that is a significant net emissions increase), for the regulated  
12 NSR pollutant; or

13                   (2) a projected actual emissions increase that, added to  
14 the amount of emissions excluded under paragraph (B)(3) of the  
15 definition of *Projected Actual Emissions* [40 CFR  
16 51.165(a)(xxviii)(A)] sums to at least fifty percent (50%) of the  
17 amount that is a “significant emissions increase,” as defined in  
18 this rule (without reference to the amount that is a significant net  
19 emissions increase), for the regulated NSR pollutant.

20                   (3) For a project in which a reasonable possibility  
21 occurs only within the meaning of Subsection (g)(2), and not also  
22 within the meaning of Subsection (g)(1), the provisions of  
23 Subsections (b) through (e) of this Section do not apply to the  
24 project.

25       **§ 1801.6. Secondary Emissions.**

26       Secondary emissions shall not be considered in determining whether a  
27 stationary source would qualify as a major stationary source. If a stationary source



1 is subject to this rule on the basis of direct emissions from the stationary source, the  
2 requirements of §1804 must also be met for secondary emissions.

3 **§ 1801.7. Stationary Sources.**

4 For purposes of this rule, the term stationary source does not refer to the source  
5 of emissions resulting directly from an internal combustion engine for transportation  
6 purposes or from a nonroad engine or nonroad vehicle as defined in §216 of the  
7 Clean Air Act.

8 **§ 1801.8. Environmental Protection Agency Determination.**

9 Notwithstanding any other requirements of this rule governing the issuance of  
10 a nonattainment major NSR permit, the GEPA Administrator shall not issue a  
11 nonattainment major NSR permit to a new major stationary source or major  
12 modification subject to the requirements of this rule if the federal Environmental  
13 Protection Agency has determined that the SIP is not being adequately implemented  
14 for the nonattainment area in which the proposed source is to be constructed or  
15 modified in accordance with the requirements of Title I, Part D of the Clean Air Act.

16 **§ 1802. Definitions.**

17 For the purposes of this rule, the definitions provided in Subsections (a), (b),  
18 and (c) of this Section apply to the terms used in this rule. In the event of any  
19 discrepancy between the definitions specified in Subsections (a), (b), and (c) of this  
20 Section, the definition in the Subsections that is listed first shall control.

21 (a) The definitions contained in 40 CFR 51.165(a)(1) shall apply,  
22 and are hereby incorporated by reference, with the exception of the definitions  
23 of “Building, structure, facility, or installation” and of “Reviewing authority”,  
24 which has the meaning specified in Subsection (b)(11) of this Section.

25 (b) The following definitions shall also apply:

26 (1) Building, structure, facility, or installation means all of the  
27 pollutant-emitting activities which 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, unless the vessel is ported for electrical generation for on-shore use or consumption. 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 two-digit code) as described in the *Standard Industrial Classification Manual, 1972*, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101-0065 and 003-005-00176-0, respectively).

(2) “Clean Air Act (CAA)” means the federal Clean Air Act, 42 U.S.C. 7401 *et seq.*, as amended.

(3) “Complete” means, in reference to an application, which contains all of the information necessary for processing.

(4) “Emission reduction” means reductions of actual emissions from emissions units.

(5) “GEPA” means the Guam Environmental Protection Agency.

(6) “GEPA Administrator” means the Administrator of the Guam Environmental Protection Agency or such Administrator's designee.

(7) “Internal emission reductions” means emission reductions which have occurred or will occur at the same major stationary source where the proposed emissions increase will occur.

(8) “Nonattainment major NSR permit” means an air pollution control permit, other than a PAL permit, that is issued in accordance with the requirements of this rule.

1           (9) “Nonattainment pollutant” means any regulated NSR  
2 pollutant for which Guam, or a portion of Guam, has been designated  
3 as nonattainment, as codified in 40 CFR 81.353, as well as any  
4 precursor of such regulated NSR pollutant specified in 40 CFR  
5 51.165(a)(1)(xxxvii)(C).

6           (10) “Permanent” means an emission reduction which is  
7 federally enforceable for the life of a corresponding increase in  
8 emissions.

9           (11) “Reviewing authority” means the GEPA Administrator.

10          (12) “Shutdown” means the cessation of operation of any air  
11 pollution control equipment or process equipment for any purpose.

12          (13) “Startup” means the setting into operation of any air  
13 pollution control equipment or process equipment for any purpose  
14 except routine phasing in of process equipment.

15          (14) “State Implementation Plan (SIP)” means the State  
16 Implementation Plan approved or promulgated for Guam under §110  
17 or 172 of the Clean Air Act.

18          (15) “Surplus” means the amount of emission reductions that  
19 are, at the time of use of an emission reduction, not otherwise required  
20 by federal or Guam law, not required by any legal settlement or consent  
21 decree, and not relied upon to meet any requirement related to the Guam  
22 State Implementation Plan (SIP). Examples of federal and Guam laws,  
23 and SIP-related requirements, include, but are not limited to, the  
24 following:

25               (A) the federally-approved Guam SIP;

26               (B) other adopted Guam air quality laws and regulations  
27 not in the SIP, including, but not limited to, any requirement,

regulation, or measure that: (1) Guam has included on a legally required and publicly available list of measures that are scheduled for adoption by Guam in the future; or (2) is the subject of a public notice distributed by Guam regarding an intent to adopt such revision;

(C) any other source or source-category specific regulatory or permitting requirement, including, but not limited to, Reasonable Available Control Technology (RACT), New Source Performance Standards (NSPS), National Emission Standards for Hazardous Air Pollutants (NESHAP), Best Available Control Measures (BACM), Best Available Control Technology (BACT), and Lowest Achievable Emission Rate (LAER); and

(D) any regulation or supporting documentation that is required by the Federal Clean Air Act, but is not contained or referenced in 40 CFR Part 52, including, but not limited to: assumptions used in attainment and maintenance demonstrations (including reasonable further progress demonstrations and milestone demonstrations), including any proposed control measure identified as potentially contributing to an enforceable near-term emission reduction commitment; assumptions used in conformity demonstrations; and assumptions used in emissions inventories.

(16) "Temporary source" means an emission source such as a pilot plant or a portable facility which will be located outside the nonattainment area after less than a cumulative total of ninety (90) days of operation in any twelve (12) continuous months.

1 (17) "Tons per year (tpy)" means annual emissions in tons.

2 (c) The definitions contained in 40 CFR 51.100 shall apply, and are  
3 hereby incorporated by reference.

4 **§ 1803. Application Requirements.**

5 **§ 1803.1. Application Submittal.**

6 The owner or operator of any proposed new major stationary source or major  
7 modification required to obtain a nonattainment major NSR permit pursuant to this  
8 rule shall submit a complete, true, and correct application to obtain a nonattainment  
9 major NSR permit to the GEPA Administrator, and include in the application  
10 submittal the information listed in § 1803.2, as well as the demonstrations listed in  
11 §§1803.3-1803.5. Designating an application complete for purposes of permit  
12 processing does not preclude the GEPA Administrator from requesting or accepting  
13 any additional information.

14 **§ 1803.2. Application Content.**

15 At a minimum, an application for a nonattainment major NSR permit shall  
16 contain the following information related to the proposed new major stationary  
17 source or major modification:

18 (a) identification of the applicant, including contact information;

19 (b) identification of address and location of the new or modified  
20 source;

21 (c) an identification and description of all emission points, including  
22 information regarding all regulated NSR pollutants emitted by all emissions  
23 units included in the new source or modification;

24 (d) a process description of all activities, including design capacity,  
25 which may generate emissions of regulated NSR pollutants in sufficient detail  
26 to establish the basis for the applicability of standards and fees;

(e) a projected schedule for commencing construction and operation for all emissions units included in the new source or modification;

(f) a projected operating schedule for each emissions unit included in the new source or modification;

(g) a determination as to whether the new source or modification will result in any secondary emissions;

(h) the emission rates of all regulated NSR pollutants, including fugitive and secondary emission rates, if applicable. The emission rates must be described in tpy and for such shorter term rates as are necessary to establish compliance using the applicable standard reference test method or other methodology specified (i.e., grams/liter, ppmv or ppmw, lbs/MMBtu);

(i) the calculations on which the emission rate information is based, including fuel specifications, if applicable, and any other assumptions used in determining the emission rates (e.g., HHV, sulfur content of natural gas);

(j) the calculations, pursuant to § 1801.3, used to determine applicability of this rule, including the emission calculations (increases or decreases) for each project that occurred during the contemporaneous period;

(k) the calculations, pursuant to §1804.3 (offset), used to determine the quantity of offsets required for the new source or modification;

(l) identification of existing emission reduction credits or identification of internal emission reductions, including related emission calculations and proposed permit modifications required to ensure emission reductions meet the offset integrity criteria of being real, surplus, quantifiable, permanent and federally enforceable or enforceable as a practical matter;

(m) if applicable, a description of how performance testing will be conducted, including test methods and a general description of testing protocols.



1           **§ 1803.3.   Lowest Achievable Emission Rate (LAER).**

2           The applicant shall submit an analysis demonstrating that LAER has been  
3 proposed for each emissions unit included in the new major stationary source or  
4 major modification that emits a nonattainment pollutant for which the new stationary  
5 source or modification is classified as major.

6           **§ 1803.4.   Certification of Compliance.**

7           The applicant shall submit a certification that each existing major stationary  
8 source owned or operated by the applicant (or any entity controlling, controlled by,  
9 or under common control with the applicant) in Guam is in compliance with all  
10 applicable emission limitations and standards under the CAA or is in compliance  
11 with an expeditious compliance schedule which is federally enforceable.

12          **§ 1803.5.   Analysis of Alternatives.**

13          The applicant shall submit an analysis of alternative sites, sizes, production  
14 processes, and environmental control techniques for the proposed source that  
15 demonstrates the benefits of the proposed source significantly outweigh the  
16 environmental and social costs imposed as a result of its location, construction, or  
17 modification.

18          **§ 1803.6.   Application Fees.**

19          The applicant shall pay the applicable fees specified in the applicable GEPA  
20 fee rules for air pollution emission sources.

21          **§ 1804.   Emissions Offsets.**

22          **§ 1804.1.   Offset Requirements.**

23          (a)   The emission increases of a nonattainment pollutant for which the new  
24 stationary source or modification is classified as major shall be offset with federally  
25 enforceable emission reductions or with internal emission reductions.

(b) Emission reductions from one (1) or more sources may be used, alone or in combination with internal emission reductions, in order to satisfy offset requirements.

(c) Emissions reductions achieved by shutting down an existing emissions unit or curtailing production or operating hours may only be credited for offsets if such reductions are surplus, permanent, quantifiable, and federally enforceable; and

(d) The shutdown or curtailment occurred after the last day of the base year for the attainment plan for the specific pollutant; or

(e) The projected emissions inventory used to develop the attainment plan explicitly includes the emissions from such previously shutdown or curtailed emissions units. However, in no event may credit be given for shutdowns that occurred before August 7, 1977.

#### **§ 1804.2. Timing.**

(a) Internal emission reductions used to satisfy an offset requirement must be federally enforceable prior to the issuance of the nonattainment major NSR permit, which relies on the emission reductions.

(b) Except as provided by Subsection (c) of this Section, the decrease in actual emissions used to generate emission reductions or internal emission reductions must occur no later than the commencement of operation of the new or modified major stationary source.

(c) Where the new emissions unit is a replacement for an emissions unit that is being shut down in order to provide the necessary offsets, the GEPA Administrator may allow up to one hundred eighty (180) calendar days for shakedown or commissioning of the new emissions unit before the existing emissions unit is required to cease operation.

#### **§ 1804.3. Quantity.**

1 The quantity of emission reductions or internal emission reductions required  
2 to satisfy offset requirements shall be determined in accordance with the following:

3 (a) The unit of measure for offsets, emission reductions, and internal  
4 emission reductions shall be tpy. All calculations and transactions shall use  
5 emission rate values rounded to the nearest one one-hundredth (0.01) tpy.

6 (b) The quantity of emission reductions or internal emission  
7 reductions required shall be calculated as the product of the amount of  
8 increased emissions, as determined in accordance with Subsection (c) of this  
9 Section, and the offset ratio, as determined in accordance with Subsection (d)  
10 of this Section.

11 (c) The amount of increased emissions shall be determined as  
12 follows:

13 (1) When the offset requirement is triggered by the  
14 construction of a new major stationary source, the amount of increased  
15 emissions shall be the sum of the potential to emit of all emissions units.

16 (2) When the offset requirement is triggered by a major  
17 modification of an existing major stationary source, the amount of  
18 increased emissions shall be the sum of the differences between the  
19 allowable emissions after the modification and the actual emissions  
20 before the modification for each emissions unit.

21 (3) The amount of increased emissions includes fugitive  
22 emissions.

23 (d) An offset ratio of 1:1 shall be used for each pound of SO<sub>2</sub>  
24 permitted to be emitted.

25 **§ 1804.4. Emission Reduction Requirements.**

26 (a) Internal emission reductions or emission reductions used to satisfy an  
27 offset requirement shall be:

(1) real, surplus, permanent, quantifiable, and federally enforceable;  
and

(2) surplus at the time of issuance of the nonattainment major NSR permit containing the offset requirements.

(b) Permitted sources whose emission reductions are used to satisfy offset requirements must appropriately amend or cancel their nonattainment major NSR permit or other air pollution control permit, where applicable, to reflect their newly reduced potential to emit, including practicably enforceable conditions to limit their potential to emit.

(c) Emission reductions must be obtained from the same nonattainment area.

(d) The use of emission reductions shall not provide:

(1) authority for, or the recognition of, any pre-existing vested right to emit any regulated NSR pollutant;

(2) authority for, or the recognition of, any rights that would be contrary to applicable law; or

(3) an exemption to a stationary source from any emission limitations established in accordance with federal or Guam laws, rules, and regulations.

#### **§ 1804.5. Restrictions on Trading Pollutants.**

The emission offsets obtained shall be for the same regulated NSR pollutant.

#### **§ 1805. Administrative Requirements.**

##### **§ 1805.1. Ambient Air Quality Standards.**

The GEPA Administrator may require the use of an air quality model to estimate the effects of a new or modified stationary source. The analysis shall estimate the effects of the new or modified stationary source, and verify that the new or modified stationary source will not prevent or interfere with the attainment or

1 maintenance of any ambient air quality standard. In making this determination, the  
2 GEPA Administrator shall take into account the mitigation of emissions through  
3 offsets pursuant to this rule, and the impacts of transported pollutants on downwind  
4 pollutant concentrations. The GEPA Administrator may impose, based on an air  
5 quality analysis, offset ratios greater than the requirements of Subsection (d) of §  
6 1804.3.

7 **§ 1805.2. Air Quality Models.**

8 (a) All required estimates of ambient concentrations, pursuant to this rule,  
9 shall be based on the applicable air quality models, databases, and other  
10 requirements specified in 40 CFR Part 51, Appendix W (“Guideline on Air Quality  
11 Models”).

12 (b) Where an air quality model specified in 40 CFR Part 51, Appendix W,  
13 is inappropriate, the model may be modified or another model substituted on written  
14 request to the Administrator. Methods such as those outlined in the “Workbook for  
15 the Comparison of Air Quality Models” (U.S. Environmental Protection Agency,  
16 Office of Air Quality Planning and Standards, Research Triangle Park, N.C. 27711,  
17 May 1978) may be used to determine the comparability of air quality models.  
18 Written approval from the USEPA and GEPA must be obtained for any modification  
19 or substitution. In addition, use of a modified or substituted model must be subject  
20 to public notification and the opportunity for public comment pursuant to §1419 of  
21 this Chapter.

22 **§ 1805.3. Stack Height Procedures.**

23 The degree of emission limitation required of any source for control of any air  
24 pollutant must not be affected by so much of any source’s stack height that exceeds  
25 good engineering practice (GEP) or by any other dispersion technique, except as  
26 provided in 40 CFR 51.118(b). For the purposes of this Section, the definitions in 40  
27 CFR 51.100 shall apply.

(a) Before the GEPA Administrator issues a nonattainment major NSR permit under this rule to a source with a stack height that exceeds GEP stack height, the Control Officer shall notify the public of the availability of the demonstration study and provide opportunity for a public hearing.

(b) Any field study or fluid model used to demonstrate GEP stack height and any determination concerning excessive concentration must be approved by the EPA and the GEPA Administrator prior to any emission limit being established.

(c) The provisions of §1805.3 do not restrict, in any manner, the actual stack height of any stationary source or facility.

**§ 1806. Nonattainment Major New Source Review (NSR) Permit – Decision.**

**§ 1806.1. Preliminary Decision.**

Following acceptance of an application as complete, the GEPA Administrator shall perform the evaluations required to determine if the proposed new major stationary source or major modification will comply with all applicable GEPA, Guam and federal rules, regulations, or statutes, including, but not limited to, the requirements under § 1803 of this rule, and shall make a preliminary written decision as to whether a nonattainment major NSR permit should be approved, conditionally approved, or denied. The decision shall be supported by a succinct written analysis. The decision shall be based on the requirements in force on the date the application is deemed complete, except when a new federal requirement, not yet incorporated into this rule, applies to the new or modified source.

**§ 1806.2. Nonattainment Major New Source Review (NSR) Permit – Preliminary Decision Requirements.**



1 (a) Prior to issuance of a preliminary written decision to issue a  
2 nonattainment major NSR permit for a new major stationary source or major  
3 modification, the GEPA Administrator shall determine:

4 (1) that each emissions unit(s) that constitutes the new source or  
5 modification will not violate any applicable requirement of the Guam SIP;  
6 and

7 (2) that the emissions from the new or modified stationary source  
8 will not interfere with the attainment or maintenance of any applicable  
9 national ambient air quality standard; and

10 (3) that the emission limitation for each emissions unit that  
11 constitutes the new source or modification specifies LAER for such units. If  
12 the GEPA Administrator determines that technological or economic  
13 limitations on the application of measurement methodology to a particular  
14 class of sources would make the imposition of an enforceable numerical  
15 emission standard infeasible, the GEPA Administrator may instead prescribe  
16 a design, operational, or equipment standard. In such cases, the GEPA  
17 Administrator shall make his/her best estimate as to the emission rate that will  
18 be achieved and must specify that rate in the application review documents.  
19 Any nonattainment major NSR permit issued without an enforceable  
20 numerical emission standard must contain enforceable conditions which  
21 ensure that the design characteristics or equipment will be properly  
22 maintained or that the operational conditions will be properly performed to  
23 continuously achieve the assumed degree of control. Such conditions shall be  
24 enforceable as emission limitations by private parties under §304 of the CAA.  
25 The term "emission limitation" shall also include such design, operational, or  
26 equipment standards; and

(4) the quantity of emission reductions or internal emission reductions required to offset the new source or modification, pursuant to §1804.3; and

(5) that all emission reductions or internal emission reductions required for the new source or modification have been identified and have been made federally enforceable or legally and practicably enforceable; and

(6) that the quantity of emission reductions or internal emission reductions determined under Subsection (b) of §1804.3 will be surrendered prior to commencing operation.

(b) Temporary sources and emissions resulting from the construction phase of a new source are exempt from Subsections (a)(4), (a)(5) and (a)(6) of this Section.

**§ 1806.3. Nonattainment Major New Source Review (NSR) Permit Contents.**

(a) A nonattainment major NSR permit for a new major stationary source or major modification shall contain terms and conditions:

(1) which ensure compliance with all applicable requirements and which are enforceable as a legal and practical matter; and

(2) sufficient to ensure that the major stationary source or major modification will achieve LAER in accordance with Subsections (b) and (c) of this Section.

(b) A new major stationary source shall achieve LAER for each nonattainment pollutant for which the source is classified as major.

(c) A major modification shall achieve LAER for each nonattainment pollutant for which the modification would result in a significant net emissions increase. This requirement applies to each proposed emissions unit at which a net emissions increase in the nonattainment pollutant would occur as a result of a physical change, or change in the method of operation of the emissions unit.

1        **§ 1806.4. Nonattainment Major New Source Review (NSR) Permit –**  
2 **Final Decision.**

3            (a)    Prior to making a final decision to issue a nonattainment major  
4        NSR permit for a new major stationary source or major modification, the  
5        GEPA Administrator shall consider all written comments that are submitted  
6        within thirty (30) days of public notification and all comments received at any  
7        public hearing(s) in making a final determination on the approvability of the  
8        application and the appropriate nonattainment major NSR permit conditions.  
9        The GEPA Administrator shall make all comments available, including the  
10       GEPA Administrator's response to the comments, for public inspection in the  
11       same locations where the GEPA Administrator made preconstruction  
12       information relating to the proposed source or modification available as per  
13       the requirements of §1808.

14           (b)    The GEPA Administrator shall deny any application for a  
15        nonattainment major NSR permit if the GEPA Administrator finds the new  
16        source or modification would not comply with the standards and requirements  
17        set forth in GEPA or federal rules or regulations.

18           (c)    The GEPA Administrator shall make a final decision whether to  
19        issue or deny the nonattainment major NSR permit after determining that the  
20        nonattainment major NSR permit will or will not ensure compliance with all  
21        applicable emission standards and requirements.

22           (d)    The GEPA Administrator shall notify the applicant in writing of  
23        the final decision and make such notification available for public inspection  
24        at the same location where the GEPA Administrator made preconstruction  
25        information and public comments relating to the source available.

26        **§ 1806.5. Ongoing Permit Requirements.**

1       The applicable terms and conditions of an issued nonattainment major NSR  
2 permit shall remain in effect to govern source operation. Such terms and conditions  
3 shall be included in any renewal or extension of the permit and any successive air  
4 pollution control permit or renewal or extension thereof subsequently issued by the  
5 GEPA Administrator for the same emission units.

6       **§ 1806.6. Technology Clearinghouse.**

7       Within thirty (30) days of the issuance of any permit under this rule, the GEPA  
8 Administrator shall submit control technology information from the permit to the  
9 USEPA Administrator for the purposes listed in § 173(d) of the CAA.

10       **§ 1807. Source Obligations.**

11       **§ 1807.1. Enforcement.**

12       Any owner or operator who constructs or operates a source or modification  
13 not in accordance with the application submitted pursuant to this rule, any changes  
14 to the application as required by the GEPA Administrator, or the terms of its  
15 nonattainment major NSR permit or a renewal or extension thereof, shall be subject  
16 to enforcement action.

17       **§ 1807.2. Termination.**

18       Approval to construct shall terminate if construction is not commenced within  
19 eighteen (18) months after receipt of such approval, if construction is discontinued  
20 for a period of eighteen (18) months or more, or if construction is not completed  
21 within a reasonable time. The GEPA Administrator may extend the eighteen (18)-  
22 month period upon a satisfactory showing of good cause why an extension is  
23 justified. This provision does not apply to the time period between construction of  
24 the approved phases of a phased construction project; each phase must commence  
25 construction within eighteen (18) months of the projected and approved  
26 commencement date.

27       **§ 1807.3. Compliance.**

1 Approval to construct shall not relieve any owner or operator of the  
2 responsibility to comply fully with applicable provisions of the SIP and any other  
3 requirements under Guam or federal law.

4 **§ 1807.4. Relaxation in Enforceable Limitations.**

5 At such time that a particular stationary source or modification becomes a  
6 major stationary source or major modification solely by virtue of a relaxation in any  
7 enforceable limitation which was established after August 7, 1980, on the capacity  
8 of the stationary source or modification to emit a pollutant, then the requirements of  
9 this rule shall apply to the stationary source or modification as though construction  
10 had not yet commenced on the stationary source or modification.

11 **§ 1808. Public Participation.**

12 After the GEPA Administrator has made a preliminary written decision to  
13 issue a nonattainment major NSR permit for a new major stationary source or major  
14 modification, as specified in §§1806.1 and 1806.2, the GEPA Administrator shall:

15 (a) publish, in at least one (1) newspaper of general circulation in  
16 Guam, a notice stating the preliminary decision of the GEPA Administrator,  
17 noting how pertinent information can be obtained, including how the public  
18 can access the information specified in §1808(b), and inviting written public  
19 comment for a thirty (30)-day period following the date of publication. The  
20 notice shall include the time and place of any hearing that may be held,  
21 including a statement of procedure to request a hearing (unless a hearing has  
22 already been scheduled);

23 (b) no later than the date the notice of the preliminary written  
24 determination is published, make available in at least one (1) location, a copy  
25 of all materials the applicant submitted, a copy of the preliminary decision, a  
26 copy of the proposed nonattainment major NSR permit, and a copy or

summary of other materials, if any, considered in making the preliminary written decision;

(c) send a copy of the notice of public comment to the applicant, EPA Region 9, any persons requesting such notice, and any other interested parties, such as the Mayor of the village where the source would be located, the Guam Land Use Commission, and any federal land manager whose lands may be affected by emissions from the source or modification;

(d) provide opportunity for a public hearing for persons to appear and submit written or oral comments on the air quality impact of the source, alternatives to it, the control technology required, and other appropriate considerations, if in the GEPA Administrator's judgment such a hearing is warranted. The GEPA Administrator shall give notice of any public hearing at least thirty (30) days in advance of the hearing.

**§ 1809. Plant-Wide Applicability Limits (PAL).**

The GEPA Administrator shall issue a Plant-wide Applicability Limit (PAL) permit according to the provisions contained in 40 CFR 51.165(f)(1) through (14). The provisions of 40 CFR 51.165(f)(1) through (14) are hereby incorporated by reference.

**§ 1810. Invalidation.**

If any provision of this rule or the application of such provision to any person or circumstance is held invalid, the remainder of this rule or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

**§ 1811. Effective Date for Referenced Federal Regulations.**

All references and citations in this rule to Title 40 of the Code of Federal Regulations (CFR) refer to the referenced federal regulation as in effect on October 17, 2022."



**Section 3. Effective Date.** This Act shall be effective upon enactment.

**Section 4. Severability.** If any provision of this Act or its application to any person or circumstance is found to be invalid or inorganic, such invalidity shall not affect other provisions or applications of this Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.