

**EXECUTIVE ORDER NO.**

**2021-23**

**WHEREAS**, the State of South Carolina has taken, and must continue to take, any and all necessary and appropriate actions in confronting and coping with the significant public health threats and other impacts associated with the 2019 Novel Coronavirus (“COVID-19”), and in doing so, the State must remain flexible to account for new and distinct circumstances—to include not only the evolving public health threats associated with COVID-19 but also the recent substantial improvements in the key metrics and data elements related to COVID-19 and South Carolina’s significant progress in administering current supplies of authorized and available COVID-19 vaccines allocated to the State—and focus on taking coordinated action to expedite and enhance ongoing recovery and revitalization initiatives, utilizing and maximizing state and federal intergovernmental and interagency financial and operational resources and collaborative response efforts, and safely and strategically revisiting and revising previous emergency measures to ensure that any remaining provisions are targeted and narrowly tailored to address the current conditions in the least restrictive manner possible; and

**WHEREAS**, in furtherance of the foregoing, and in preparing for and responding to the evolving threats posed by COVID-19, the undersigned has, *inter alia*, convened the Public Health Emergency Plan Committee (“PHEPC”), activated the South Carolina Emergency Operations Plan (“Plan”), and regularly conferred with state and federal agencies, officials, and experts, to include the White House Coronavirus Task Force, the South Carolina Department of Health and Environmental Control (“DHEC”), and the South Carolina Emergency Management Division (“EMD”); and

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

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

**WHEREAS**, on March 13, 2020, the President of the United States also declared that the COVID-19 pandemic in the United States constitutes a national emergency, pursuant to Sections 201 and 301 of the National Emergencies Act, 50 U.S.C. §§ 1601 *et seq.*, and consistent with Section 1135 of the Social Security Act, 42 U.S.C. § 1320b-5, as amended, retroactive to March 1, 2020, and more recently, on February 24, 2021, the President of the United States published a notice in the *Federal Register* that the national emergency shall continue and remain in effect beyond March 1, 2021; and

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

**WHEREAS**, since the President of the United States first declared that a major disaster exists in the State of South Carolina due to "emergency conditions . . . resulting from the Coronavirus Disease 2019 (COVID-19) pandemic," the Federal Emergency Management Agency ("FEMA") has periodically amended the terms of such disaster declaration to provide, authorize, or otherwise make available to the State different and additional federal funds and resources to facilitate emergency assistance and response operations; and

**WHEREAS**, on May 18, 2020, the undersigned approved and signed Act No. 135 of 2020 (H. 3411, R-140), as passed by the General Assembly and ratified on May 12, 2020, which expressly acknowledged "the public health emergency associated with the 2019 Novel Coronavirus (COVID-19)" and recognized that "given the extraordinary challenges facing our State, our nation, and the world due to COVID-19, it is necessary to take emergency measures to combat the spread of this deadly virus"; *see also* Act No. 133 of 2020 (R-138, S. 635); Act No. 142 of 2020 (R-148, H. 5202); Act No. 143 of 2020 (R-149, H. 5305); Act No. 154 of 2020 (R-170, H. 3210); Act No. 2 of 2021 (H. 3707, R-4); and

**WHEREAS**, in addition to declaring an initial State of Emergency on March 13, 2020, the undersigned has issued various Executive Orders initiating, directing, and modifying further extraordinary measures designed to address the significant and evolving public health, economic, and other impacts associated with COVID-19 and to mitigate the resulting burdens on healthcare providers, individuals, and businesses in the State of South Carolina, certain provisions of which have been extended by subsequent and distinct emergency declarations set forth in Executive Order Nos. 2020-15, 2020-23, 2020-29, 2020-35, 2020-38, 2020-40, 2020-42, 2020-44, 2020-48, 2020-53, 2020-56, 2020-59, 2020-62, 2020-65, 2020-67, 2020-70, 2020-72, 2020-75, 2020-77, 2021-03, 2021-07, 2021-08, 2021-10, 2021-13, 2021-15, 2021-18, 2021-20, and 2021-22; and

**WHEREAS**, the Supreme Court of South Carolina has likewise issued various Orders in response to, and addressing the impacts of, COVID-19, and in doing so, the Court has expressly recognized that the extraordinary circumstances associated with COVID-19 differ from previous emergencies in many respects, as "in the prior emergencies, the circumstances giving rise to the emergency involved a single event with a beginning and a predictable end," which "is not the case

for the coronavirus,” *In re Operation of the Trial Courts During the Coronavirus Emergency*, App. No. 2020-000447, Am. Order No. 2021-03-04-01, ¶ (a) (S.C. Sup. Ct. filed March 4, 2021); and

**WHEREAS**, on March 5, 2021, the undersigned issued Executive Order No. 2021-12, superseding, rescinding, and replacing Executive Order No. 2021-11 and memorializing further modifications and amendments to certain emergency measures as part of the process of regularly reviewing the same to ensure that the remaining targeted restrictions or initiatives were necessary and appropriate and narrowly tailored to address and mitigate the public health and other threats and impacts associated with COVID-19 in the least restrictive manner possible; and

**WHEREAS**, in addition to issuing the above-referenced and other Executive Orders and directing additional emergency measures, the undersigned has consistently and repeatedly urged South Carolinians to practice effective “social distancing” and wear face coverings to limit community spread and transmission of COVID-19 and previously encouraged counties, municipalities, and political subdivisions of this State to enact or implement, or modify, amend, or rescind, appropriate and narrowly tailored emergency ordinances, orders, or other measures requiring individuals to wear face coverings in public settings where they are, will be, or reasonably could be located in close proximity to others who are not members of the same household and where it is not feasible to maintain six (6) feet of separation from such individuals or to otherwise practice effective “social distancing” in accordance with guidance from DHEC and the Centers for Disease Control and Prevention (“CDC”); and

**WHEREAS**, state and federal public health experts have consistently encouraged public officials not to rescind certain emergency measures designed to address and reduce community spread or transmission of COVID-19 unless and until identifying a downward trajectory of documented cases of COVID-19 within a defined period or a downward trajectory related to the percentage of positive tests for COVID-19 within a defined period; and

**WHEREAS**, contemporaneous with the State’s implementation of various initiatives designed to reduce community spread or transmission of COVID-19, the United States Food and Drug Administration (“FDA”) has granted emergency use authorizations for multiple COVID-19 vaccines, which have not yet received standard FDA approval, pursuant to the Project BioShield Act of 2004, 21 U.S.C. § 360bbb-3; and

**WHEREAS**, federal law expressly recognizes that each individual who receives an administration of a product pursuant to an emergency use authorization has “the option to accept or refuse administration of the product,” 21 U.S.C. § 360bbb-3(e)(1)(A)(ii)(III); and

**WHEREAS**, although the State of South Carolina will continue to encourage eligible individuals who wish to receive a COVID-19 vaccine approved for use by the FDA in accordance with an emergency use authorization to do so, the State will not mandate that South Carolinians receive such vaccines; and

**WHEREAS**, an individual’s COVID-19 vaccination status should be regarded as private health information, and governmental entities should not compel proof, certification, documentation, or disclosure of the same, whether by mandating what has been characterized as a “vaccine passport” or otherwise, for purposes of conditioning receipt of services or assistance or

restricting access to any building, structure, facility, or other physical or geographic location based on an individual's COVID-19 vaccination status; and

**WHEREAS**, the United States Constitution does not authorize or empower the federal government to mandate the use of vaccine passports on a nationwide basis, and for the reasons set forth herein, the State of South Carolina will not impose such a requirement on the people of this State using the police power that is reserved to the States in accordance with the United States Constitution and under the system of federalism established thereby; and

**WHEREAS**, in recent weeks and months, due in large part to the implementation of previous emergency measures and the expedited distribution and administration of available supplies of COVID-19 vaccines, as well as the continued diligence, resilience, and persistence of South Carolinians in making responsible choices to protect themselves and their communities, the State has noted and documented significant improvements in several key indicators, metrics, and data elements used to assess the measure of impact from COVID-19; and

**WHEREAS**, as of the date of this Order, DHEC and its public and private partners have conducted more than 7,600,000 tests for COVID-19; and

**WHEREAS**, while simultaneously enhancing testing capacity and expanding contract tracing efforts, DHEC and its public and private partners have also administered over 3,100,000 doses of vaccines for COVID-19; and

**WHEREAS**, on March 26, 2021, the undersigned and DHEC announced that all South Carolinians over the age of sixteen would be eligible to receive a vaccine for COVID-19 beginning on March 31, 2021; and

**WHEREAS**, at present, over 43% of South Carolinians eligible to receive a COVID-19 vaccine have received at least one dose of a vaccine for COVID-19; and

**WHEREAS**, as a result of the foregoing progress, DHEC continues to document measured progress and downward or declining trends associated with the average rate of cases of COVID-19 per 100,000 individuals, the percentage of positive tests for COVID-19, and the number of new hospital admissions and deaths associated with or related to COVID-19; and

**WHEREAS**, according to a recent study published by the Medical University of South Carolina, approximately 60% of South Carolinians are immune from COVID-19, whether by virtue of having received a COVID-19 vaccine or because of natural immunity; and

**WHEREAS**, in addition to continuing, in whole or in part, certain emergency measures designed to limit community spread and transmission of COVID-19, in further proactively preparing for and promptly responding to the evolving threats posed by COVID-19, the State of South Carolina must also simultaneously confront the significant economic impacts and other consequences associated with COVID-19 and undertake efforts to stabilize and reinvigorate the State's economy by addressing issues related to unemployment, facilitating the safe reopening of businesses and industries, permitting economic flexibility by reducing regulations, accessing and utilizing federal funds and resources to assist with emergency operations, and maximizing

interagency or intergovernmental coordination, cooperation, and collaboration to enhance the State's response to COVID-19; and

**WHEREAS**, as part of the foregoing initiative, and to the extent that counties, municipalities, or other political subdivisions of the State continue to impose or implement emergency measures or mandates predicated upon or issued in connection with the undersigned's prior authorization or declarations of a State of Emergency related to COVID-19, the undersigned must review and assess any remaining restrictions to ensure that such measures are narrowly tailored to serve a legitimate and compelling public health or other necessary and appropriate purpose, are properly limited in scope and duration so as not to needlessly restrict or infringe upon recognized rights or liberty interests without sufficient justification and the requisite consideration of improving circumstances and conditions related to COVID-19, and do not conflict with the undersigned's Orders; and

**WHEREAS**, although COVID-19 continues to pose a serious threat to the State of South Carolina, for the aforementioned and other reasons—and particularly in light of the recent significant improvements in the key metrics and data elements related to COVID-19 and the State's cited progress in administering COVID-19 vaccines—the undersigned has determined that it is necessary and appropriate to modify, amend, or rescind certain emergency measures as part of the process of regularly reviewing such measures to account for new and distinct circumstances and the latest data related to the impact of COVID-19 and to ensure that any remaining measures are targeted and narrowly tailored to address and mitigate the current public health threats in the least restrictive manner possible; and

**WHEREAS**, in view of the foregoing objectives, the undersigned has determined that it is necessary and appropriate to supersede, rescind, and replace Executive Order No. 2021-12 and to consolidate, restate, or otherwise incorporate, in whole or in part, any modified or remaining provisions thereof to clarify which emergency measures are in effect; and

**WHEREAS**, consistent with the aforementioned objectives, in addition to reviewing and revising certain measures contained in previous Orders, the undersigned has also determined that it is necessary and appropriate to address certain ongoing mandates and continued restrictions imposed by counties, municipalities, and other political subdivisions related to COVID-19; and

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

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

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

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

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

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

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

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

**WHEREAS**, it is axiomatic that “[t]he health, welfare, and safety of the lives and property of the people are beyond question matters of public concern, and reasonable regulations and laws designed to preserve and protect the same are clearly contained in the police power inherent in the sovereign,” *Op. Att’y Gen.*, 1980 S.C. Op. Att’y Gen. 142, 1980 WL 81975, at \*1 (S.C.A.G. Sept. 5, 1980); and

**WHEREAS**, for the aforementioned and other reasons, and in recognition and furtherance of the undersigned's authority and responsibility to provide for and ensure the health, safety, security, and welfare of the people of the State of South Carolina, the undersigned has determined that the State of South Carolina must take proactive action and implement, extend, and modify certain targeted measures designed to slow the spread of COVID-19 and mitigate the significant economic impacts and other consequences associated with COVID-19, while also ensuring that any remaining measures narrowly tailored to address and mitigate the current public health threats in the least restrictive manner possible.

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

**Section 1. Modification, Consolidation, and Continuation of Previous Emergency Measures**

A. I hereby supersede, rescind, and replace Executive Order No. 2021-12, with any modified or remaining provisions thereof restated, in whole or in part, below or otherwise incorporated herein.

B. I hereby expressly rely upon and incorporate by reference, to the extent applicable, the recitals and other specific factual findings, legal authorities, determinations, and conclusions contained in previous Orders, to include Executive Order Nos. 2021-12 and 2021-22.

**Section 2. Emergency Measures Regarding Face Coverings**

A. I hereby continue to encourage all individuals within the State of South Carolina who are not fully vaccinated against COVID-19 to wear a Face Covering, as set forth below and further defined herein, in public settings where they are, will be, or reasonably could be located in close proximity to others who are not members of the same household and where it is not feasible to maintain six (6) feet of separation from such individuals or to otherwise practice effective "social distancing" in accordance with CDC and DHEC guidance, and I further urge all individuals within the State of South Carolina who are eligible and wish to get vaccinated against COVID-19 to do so.

B. I hereby authorize the South Carolina Department of Administration ("Department of Administration"), in consultation with DHEC, to promulgate guidelines regarding the use of Face Coverings in state government offices, buildings, and facilities.

C. For purposes of this Order, "Face Covering" shall mean a covering of the nose and mouth that is secured to the head with ties, straps, or loops over the ears or is otherwise wrapped around the lower face. A Face Covering can be made of natural or synthetic fabrics and can be handmade or improvised from other items. A face shield that covers the nose and mouth and extends below the chin shall satisfy the Face Covering provisions of this Order. Medical-grade masks or respirators shall satisfy the Face Covering provisions of this Order; however, according to the latest CDC guidance, these critical supplies should be reserved for use by healthcare workers and medical first responders.

D. During the course of the COVID-19 pandemic, I have repeatedly declined to issue an Order mandating the use of Face Coverings, on a statewide basis, in many or all public settings. However, in certain prior Orders, I have required the use of Face Coverings, in limited contexts and subject to certain exceptions, by individuals in state government offices, buildings, and facilities and by employees, customers, patrons, suppliers, vendors, and other visitors in restaurants, except while actively engaged in eating or drinking. I have also noted that the foregoing measures did not prevent or prohibit counties, municipalities, or other political subdivisions of this State from enacting or implementing, or modifying, amending, or rescinding, appropriate and narrowly tailored emergency ordinances, orders, or other measures requiring individuals to wear a Face Covering, provided that such actions considered and accounted for localized circumstances and key indicators, metrics, and data elements used to assess the measure of impact from COVID-19 and were targeted and narrowly tailored to address and mitigate the existing public health threats in the least restrictive manner possible. *E.g.*, Executive Order No. 2021-11, § 2(G); *see also* Executive Order No. 2021-11, § 13(C) (“If or to the extent that any political subdivision of this State seeks to adopt or enforce a local ordinance, rule, regulation, or other restriction that conflicts with this Order, this Order shall supersede and preempt any such local ordinance, rule, regulation, or other restriction.”). Based on the State’s significant progress related to the administration of authorized and available COVID-19 vaccines and the latest key indicators, metrics, and data elements used to assess the measure of impact from COVID-19, as well as the other circumstances described herein, I have determined that any remaining mandates issued by counties, municipalities, or other political subdivisions of this State related to Face Coverings are no longer necessary or appropriate to address and mitigate the existing public health threats and that circumstances are such that South Carolinians can make responsible choices and take appropriate precautions to protect themselves and their communities. For the foregoing reasons, to the extent any county, municipality, or political subdivision of this State continues to impose any ordinance, order, or other measure that requires the general public within its jurisdiction to wear a Face Covering and has relied in whole or in part on the undersigned’s prior authorization or declarations of a State of Emergency as part of the basis for imposing, or for the duration of, a Face Covering requirement, I have determined and do hereby declare that any such ordinance, order, or other measure is invalid and preempted in accordance with Section 10(C) of this Order.

E. This Section shall not be interpreted, applied, implemented, or construed in a manner so as to prohibit any county, municipality, or political subdivision of this State from promulgating guidelines regarding the use of Face Coverings by its employees or in government offices, buildings, and facilities that are consistent with guidance from DHEC or from implementing appropriate measures or undertaking efforts to “reasonably adhere[] to public health guidance” for purposes of the South Carolina COVID-19 Liability Immunity Act (R-39, S. 147).

F. This Section shall not apply to actions or activities of or to buildings or structures, or portions thereof, that are occupied or controlled by agencies, departments, officials, or employees of the Legislative or Judicial Branches of the State of South Carolina, which shall be governed by their respective orders, rules, or regulations.

G. This Section shall not be interpreted, applied, implemented, or construed in a manner so as to prevent businesses or other establishments from developing or implementing proprietary safety requirements or restrictions or incorporating, implementing, complying with,

and adhering to any applicable sanitation guidelines promulgated by the CDC, DHEC, or any other state or federal public health officials, whether related to Face Coverings or other hygiene-related measures, or from implementing appropriate measures or undertaking efforts to “reasonably adhere[] to public health guidance” for purposes of the South Carolina COVID-19 Liability Immunity Act (R-39, S. 147) or taking other appropriate precautions to facilitate effective “social distancing” and avoid potential exposure to, and prevent the spread of, COVID-19.

H. This Section shall not be interpreted, applied, implemented, or construed in a manner so as to apply to healthcare settings in which a Face Covering is determined to be medically necessary and appropriate.

I. I hereby authorize and direct DHEC to take any necessary and appropriate action to allow for the parent, guardian, legal custodian, foster-care provider, or other representative authorized to provide consent for or on behalf of a student in any public school in the State of South Carolina to opt out of any Face Covering requirement imposed by any public school official or public school district in the State of South Carolina pertaining to school operations and facilities, subject to any guidance issued by the South Carolina Department of Education related to school bus operations based on purported limitations, restrictions, or requirements promulgated by the federal government. *See* Executive Order No. 13998 (Executive Order on Promoting COVID-19 Safety in Domestic and International Travel) (Jan. 21, 2021); CDC Order Under Section 361 of the Public Health Service Act (42 U.S.C. § 264) and 42 C.F.R. §§ 70.2, 71.31(b), 71.32(b) (Requirement for Persons to Wear Masks While on Conveyances and at Transportation Hubs) (Jan. 29, 2021). To facilitate the foregoing initiative, I hereby direct DHEC, in consultation with the Superintendent of Education, to develop and distribute a standardized form for the parent, guardian, legal custodian, foster-care provider, or other representative authorized to provide consent for or on behalf of a student in any public school in the State of South Carolina to opt out a student from a Face Covering requirement imposed by any public school official or public school district pertaining to school operations and facilities. I hereby authorize DHEC, in consultation with the Superintendent of Education, to provide or issue any necessary and appropriate additional or supplemental guidance, rules, regulations, or restrictions regarding the application of this Paragraph or to otherwise provide clarification regarding the same, through appropriate means, without the need for further Orders.

### **Section 3. Emergency Measures to Prohibit Vaccine Passports**

A. I hereby prohibit any agency, department, official, or employee of the State of South Carolina, or any political subdivision thereof, from developing, issuing, or requiring presentation of a Vaccine Passport, as further defined herein.

B. I hereby prohibit any agency, department, official, or employee of the State of South Carolina, or any political subdivision thereof, from adopting or enforcing any order, ordinance, policy, regulation, rule, or similar measure that requires or purports to require an individual to provide, as a condition of receiving any government service or entering any building, structure, facility, or other physical or geographic location, any certification or documentation regarding the individual’s vaccination status for any COVID-19 vaccine administered under an emergency use authorization issued by the FDA.

C. For purposes of this Section, a “Vaccine Passport” is defined as uniform or standardized documentation developed for the purpose of verifying, confirming, or certifying an individual’s vaccination status solely with respect to any COVID-19 vaccine administered pursuant to an emergency use authorization issued by the FDA to a third party or otherwise publishing or sharing an individual’s COVID-19 vaccination record or status or corresponding personal health information.

D. This Section shall not be interpreted, applied, implemented, or construed in a manner so as to apply to healthcare-related activities or settings, in which documentation or certification regarding an individual’s vaccination status is medically necessary and appropriate or otherwise addressed or required by existing law, or to limit the ability of an individual to access their own vaccination-related records or to request that copies of any such records be provided or released to a third party.

E. This Section shall not apply to actions or activities of or to buildings or structures, or portions thereof, that are occupied or controlled by agencies, departments, officials, or employees of the Legislative or Judicial Branches of the State of South Carolina, which shall be governed by their respective orders, rules, or regulations.

F. I hereby authorize DHEC to provide or issue any necessary and appropriate additional or supplemental guidance, rules, regulations, or restrictions regarding the application of this Section or to otherwise provide clarification regarding the same, through appropriate means, without the need for further Orders.

**Section 4. Emergency Measures to Provide Regulatory Flexibility, Accelerate Emergency Preparation and Response Activities, and Ensure the Continuity of Government Operations**

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

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

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

D. I hereby direct all state agencies to immediately expedite the transition back to normal operations. All Agency Heads, or their designees, shall submit to the Department of Administration, for review and approval, a plan to expeditiously return all non-essential employees and staff to the workplace on a full-time basis. This Section shall apply to state government agencies, departments, and offices under the authority of the undersigned. I further direct the Department of Administration to continue to provide or issue any necessary and appropriate additional or supplemental guidance, rules, or regulations regarding the application of this Section, or to otherwise provide clarification regarding the same, to such agencies, departments, and offices and to any additional agencies, departments, and offices so as to facilitate and expedite implementation of these initiatives.

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

#### **Section 5. Emergency Measures to Expedite the Provision of Critical Healthcare Services**

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

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

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

D. I hereby direct the Adjutant General to continue implementing and overseeing efforts to coordinate with, between, and among the South Carolina National Guard and hospitals or other healthcare providers, as necessary and applicable, regarding any actual or potential

requirements for, or contingency plans related to, the mobilization, utilization, or acquisition of resources; the creation, modification, or construction of mobile or temporary facilities or other critical infrastructure; or other anticipated or unanticipated matters related to the State's preparation for, and response to, the evolving public health threat posed by COVID-19. In accordance with section 25-1-1840 of the South Carolina Code of Laws, as well as previous Executive Orders and other applicable law, I further authorize and direct the Adjutant General to activate and utilize any and all South Carolina National Guard personnel and equipment he deems necessary and appropriate and to issue the requisite supplemental orders.

**Section 6. Emergency Measures to Provide Regulatory Flexibility and Facilitate “Social Distancing” in Restaurants and Retail Settings**

A. I have determined that the State of South Carolina must continue to undertake and implement additional measures to slow the spread of COVID-19, minimize the current and future strain on healthcare providers, and mitigate the economic impacts on affected individuals and businesses. In furtherance of the foregoing, and in accordance with the President's Coronavirus Guidelines for America, as well as other applicable state and federal public health guidance, the State must promote and facilitate effective “social distancing” practices, including “us[ing] drive-thru, pickup, or delivery options” to the greatest extent practicable.

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

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

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

1. For purposes of this Section, “Permit” is defined as an on- or off-premises permit issued by DOR in accordance with Title 61, Chapter 4 of the South Carolina Code of Laws, with the exception of “special event” permits, for use at fairs and special functions, issued pursuant to section 61-4-550 of the South Carolina Code of Laws, as amended.
2. A retailer shall have a clearly designated delivery or pickup area abutting or adjacent to the retailer's place of business.
3. A customer who purchases beer or wine must prove at the time of curbside delivery or pickup that he is twenty-one (21) years of age or older by providing a valid government-issued identification.

4. A retailer shall not allow curbside delivery of beer or wine to, or pickup of beer or wine by, an intoxicated person or a person who is under twenty-one (21) years of age.
5. Any Permit holder's employee or agent who is responsible for delivering beer or wine in sealed containers for off-premises consumption to a customer's vehicle shall be eighteen (18) years of age or older.
6. Curbside delivery or pickup of "alcoholic liquors," as defined by section 61-6-20 of the South Carolina Code of Laws, as amended, shall be prohibited.

#### **Section 7. Authorization of Voluntary COVID-19 Testing at Public Schools**

A. I hereby authorize DHEC's Director of Public Health to issue a statewide standing order to allow for the voluntary testing of students, teachers, and staff for COVID-19 at public schools in the State of South Carolina. Any and all such testing shall be conducted pursuant to the terms of the standing order issued by the Director of Public Health, with the requisite prior consent, and in a manner that is consistent with applicable law. To facilitate the foregoing initiative, I hereby direct DHEC to develop and distribute a standardized form to memorialize and confirm that prior consent for voluntary testing is obtained from any participant or participant's parent, guardian, legal custodian, foster-care provider, or other representative authorized to provide consent, as applicable, in a manner that is consistent with state and federal law.

B. I hereby authorize DHEC to provide or issue any necessary and appropriate additional or supplemental guidance, rules, regulations, or restrictions regarding the application of this Section or to otherwise provide clarification regarding the same, through appropriate means, without the need for further Orders.

#### **Section 8. Emergency Measures to Facilitate Law Enforcement Assistance and Support and Protect First Responders**

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

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

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

## **Section 9. Enforcement**

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

B. I hereby authorize, order, and direct any and all law enforcement officers of the State, or any political subdivision thereof, in accordance with section 16-7-10 of the South Carolina Code of Laws and other applicable law, to prohibit or disperse any congregation or gathering of people, unless authorized or in their homes, in groups of three (3) or more people, if any such law enforcement official determines, in their discretion, that any such congregation or gathering of people poses, or could pose, a threat to public health. Pursuant to section 16-7-10(A) of the South Carolina Code of Laws, any individual who “refuse[s] to disperse upon order of a law enforcement officer,” “wilfully fail[s] or refuse[s] to comply with any lawful order or direction of any law enforcement officer,” or otherwise violates any provision of any Order issued by the undersigned in connection with the State of Emergency “is guilty of a misdemeanor and, upon conviction, must be fined not more than one hundred dollars or imprisoned for not more than thirty days.” I further authorize and instruct the South Carolina Law Enforcement Division (“SLED”), in consultation with the Attorney General of South Carolina, to provide any necessary and appropriate additional or supplemental guidance to law enforcement agencies, departments, or officers of the State, or any political subdivision thereof, regarding the interpretation, application, or enforcement of section 16-7-10 of the South Carolina Code of Laws.

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

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

## **Section 10. General Provisions**

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

B. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this Order is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this Order, as the undersigned

would have issued this Order, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

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

D. I hereby expressly authorize the Office of the Governor to provide or issue any necessary and appropriate additional or supplemental guidance, rules, regulations, or restrictions regarding the application of this Order or to otherwise to provide clarification regarding the same, through appropriate means, without the need for further Orders.

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

**GIVEN UNDER MY HAND AND THE  
GREAT SEAL OF THE STATE OF  
SOUTH CAROLINA, THIS 11th DAY OF  
MAY, 2021.**

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**HENRY MCMASTER**  
Governor

ATTEST:

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MARK HAMMOND  
Secretary of State