

AGENDA ITEM CONTROL SHEET

**Item Title:** Request for Rulemaking on Amendments to Regulation 22 to Add Colorado Greenhouse Gas Program

**Meeting Date:** February 18, 2021

<b>TYPES OF ACTION</b>		
<i>NON-HEARING ACTIONS</i>	<i>REQUEST FOR HEARING</i>	<i>HEARING</i>
<input type="checkbox"/> Administrative	X Rulemaking	<input type="checkbox"/> Rulemaking
<input type="checkbox"/> Briefing	<input type="checkbox"/> Public	<input type="checkbox"/> Public
<input type="checkbox"/> Policy	<input type="checkbox"/> Adjudicatory	<input type="checkbox"/> Adjudicatory
<input type="checkbox"/> Other	<input type="checkbox"/> Informational	<input type="checkbox"/> Informational
Is this action a Rule Review? <input type="checkbox"/> Yes    X No		
<b>RECOMMENDED ACTION</b>		
<input type="checkbox"/> Adoption	X Approval	<input type="checkbox"/> Denial
<b>MOTION</b>		
X Required	<input type="checkbox"/> Attached	<input type="checkbox"/> Not Applicable
<b>STATUTORY AUTHORITY</b>		
<input type="checkbox"/> General	X Specific	
Sections 25-7-102, 105(1)(e), C.R.S.		
<b>EPA SUBMITTAL</b>		
Is this issue considered a SIP revision? No		
Which SIP?		
EPA submission deadline:		
Is this a delegated program? No		

## ISSUE STATEMENT:

During the 2019 legislative session, Colorado's General Assembly adopted House Bill 2019-1261 (concerning the reduction of greenhouse gas pollution) (HB 19-1261) amending the legislative declaration in Section 25-7-102 of the Air Pollution Prevention and Control Act (Act), Section 25-7-101 *et seq.*, C.R.S., and Senate Bill 2019-096 (concerning the collection of greenhouse gas emissions data) (SB 19-096) creating Section 25-7-140 of the Act. HB 19-1261 and SB 19-096 both define greenhouse gases (GHG) as including carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide (N<sub>2</sub>O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), sulfur hexafluoride (SF<sub>6</sub>) and nitrogen trifluoride (NF<sub>3</sub>).

In HB 19-1261, now codified at Section 25-7-102(2), C.R.S., the General Assembly declared that "climate change adversely affects Colorado's economy, air quality and public health, ecosystems, natural resources, and quality of life[.]" acknowledged that "Colorado is already experiencing harmful climate impacts[.]" and that "many of these impacts disproportionately affect" certain disadvantaged communities. Consequently, the legislature updated Colorado's statewide GHG reduction goals requiring the Air Quality Control Commission (Commission) to implement regulations to achieve a 26% reduction of statewide GHG emissions by 2025; a 50% reduction by 2030; and a 90% reduction by 2050, each as compared to 2005 levels. Section 25-7-102(2)(g), C.R.S. To accomplish these important goals the legislature also passed SB 19-096, now codified as Section 25-7-140, C.R.S., directing the Commission to undertake two phases of rulemaking aimed first at requiring GHG emitters to monitor and report GHG emissions, Section 25-7-140(2)(a)(I), C.R.S., and second to propose rules to implement measures allowing the state to cost-effectively meet its GHG reduction goals. Sections 25-7-105(1)(e) and 140(2)(a)(III), C.R.S.

With respect to GHG reporting and the statewide inventory, Section 25-7-140(2)(a)(I), C.R.S., requires the Commission to adopt rules by June 1, 2020, "requiring greenhouse gas-emitting entities to monitor and publicly report their emissions as the Commission deems appropriate to support Colorado's [GHG] inventory efforts and to facilitate implementation of rules that will timely achieve Colorado's greenhouse gas emission reduction goals." Further, Section 25-7-140(2)(a), C.R.S., requires the Commission to consider what information is already being reported for Colorado under the U.S. Environmental Protection Agency's (EPA's) current federal GHG reporting rule, otherwise known as the Mandatory Greenhouse Gas Reporting Rule codified in Title 40 CFR Part 98 (Part 98), and tailor new reporting requirements to fill any gaps in data as determined to be appropriate to allow for a comprehensive and robust state GHG inventory.

Sections 25-7-105(1)(e) and 140(2)(a)(III), C.R.S., further require the Commission to implement GHG reduction strategies to achieve the reduction goals set forth in Section 25-7-102(2)(g), C.R.S. Pursuant to Section 25-7-105(1)(e)(II), C.R.S., the Commission is required to "timely promulgate implementing rules and regulations ... [which] shall be revised as necessary over time to ensure timely progress toward the 2025, 2030 and 2050 goals." The law is specifically "intended to facilitate prompt action to address greenhouse gas emissions and nothing in this section or the emissions inventory provisions of Section 25-7-102 shall be construed to slow, interfere with or impede state action to timely adopt rules that reduce greenhouse gas emissions to meet the state's greenhouse gas emission reduction goals." Section 25-7-140(5), C.R.S. The Commission was required to publish, by July 1, 2020, a notice of proposed rulemaking that

proposed rules to implement measures that would cost-effectively allow the state to meet its greenhouse gas emission goals. Section 25-7-140(2)(a)(III), C.R.S.

Pursuant to Section 25-7-105(1)(e)(IV), the implementing rules “may include, in addition to renewable energy development strategies, regulatory strategies that have been deployed by another jurisdiction to reduce multi-sector greenhouse gas emissions, that facilitate adoption of technologies that have very low or zero emissions, and that enhance cost-effectiveness, compliance flexibility, and transparency around compliance costs, among other regulatory strategies.” In addition, the Commission “may coordinate with other jurisdictions in securing emission reductions, including in satisfying future federal regulations” and “may account for reductions in net greenhouse gas emissions that occur under coordinated jurisdictions’ programs if the commission finds that the implementing regulations of each coordinated jurisdiction are of sufficient rigor to ensure the integrity of the reductions in greenhouse gas emissions to the atmosphere and may account for carbon dioxide that electricity consumption in this state causes to be emitted elsewhere.” *Id.* The Commission’s implementing rules must “provide for ongoing tracking of emission sources that adversely affect disproportionately impacted communities” and “must include strategies designed to achieve reductions in harmful air pollution affecting those communities.” Section 25-7-105(1)(e)(II), C.R.S.

Broadly, the Commission has “maximum flexibility in developing an effective air quality control program and may promulgate such combination of regulations as may be necessary to carry out that program.” Section 25-7-106(1), C.R.S. The Commission has the authority to promulgate such rules “as are necessary for the proper implementation and administration” of the Act. Section 25-7-105(1), C.R.S. This includes regulations pertaining to emission controls generally and, more specifically, pertaining to greenhouse gas reductions. Section 25-7-105(1)(b), (e), C.R.S. Section 25-7-102, C.R.S., also requires the “use of all available practical methods which are technologically feasible and economically reasonable so as to reduce, prevent, and control air pollution throughout the state of Colorado” and requires “the development of an air quality control program in which the benefits of the air pollution control measures utilized bear a reasonable relationship to the economic, environmental, and energy impacts and other costs of such measures.”

Proposed amendments to Regulation 22, including revised Part A and newly proposed Part C are intended to satisfy the requirements set forth by the General Assembly in Section 25-7-140(2)(a)(I), C.R.S., with respect to statewide GHG reporting and a GHG reduction strategy to address statewide reductions required by Sections 25-7-105(1)(e), 140(2)(a)(III), and 25-7-102(2)(g), C.R.S., by creating a market-based Colorado GHG program.

Petitioners request the Commission set for hearing the amended Regulation 22 as part of the state’s efforts to reduce GHG emissions as directed in Sections 25-7-105 and 25-7-140, C.R.S.

### **Part A. Greenhouse Gas Reporting Requirements**

The proposed amendments to existing Part A will establish mandatory GHG reporting requirements for fuel suppliers and importers, which were not given reporting requirements in Regulation 22, as originally adopted. For suppliers, the GHGs reported will be the quantity that would be emitted from combustion or use in Colorado of the products supplied. Reporting for such entities is necessary to ensure that the GHG inventory required under statute is accurate and that such entities can participate in and be subject to the requirements of the Colorado GHG Program proposed in Part C.

Fuel supplier entities that will be subject to this regulation that are also subject to the reporting requirements of the EPA's mandatory GHG reporting rule under 40 CFR Part 98 (Part 98) will also be required to report directly to the State of Colorado under this regulation.

Part 98 effectively establishes three groups of source categories required to report annual GHG emissions: sources required to report regardless of emission volumes; sources only required to report if emissions meet or exceed specified thresholds (generally 25,000 metric tons of carbon dioxide equivalent (CO<sub>2</sub>e) in combined emissions from stationary sources); and fuel suppliers that import or export product equivalent to 25,000 metric tons of CO<sub>2</sub>e or more. Through the proposed revisions to Part A, Petitioners propose to build upon established federal reporting requirements to close reporting gaps left by Regulation 22 as originally promulgated.

### **Part C. Colorado Greenhouse Gas Program**

Colorado has taken steps to begin the process of reducing its GHG emissions. These include passing zero emission vehicle standards, strengthening the state's oil and gas methane regulations, securing commitments for the early retirements of coal-fired power plants, and requiring the phaseout of certain HFC products, pursuant to Regulation 22, Part B. While these steps are significant, research shows that these initial efforts are not nearly enough to ensure that Colorado meets its climate targets. The Air Pollution Control Division's (Division) "2015 Greenhouse Gas Inventory Update Including Projections to 2020-2030" (Dec. 2019) cites only a "modest decrease in GHG emissions between 2015 and 2030," using the EPA State Inventory Tool. A February 2020 report from M.J. Bradley & Associates predicts a large shortfall of meeting Colorado's GHG emission reduction targets (approximately 30 million metric tons CO<sub>2</sub>e in 2025 and 46 million metric tons CO<sub>2</sub>e in 2030) absent additional efforts. *See* "Colorado's Climate Action Plan Emission Targets: Illustrative Strategies and GHG Abatement Potential" (M.J. Bradley & Assoc., Feb. 2020). Resources for the Future projections from the RFF-DR CGE model in July 2020 highlight a "significant compliance gap in both 2025 and 2030," projecting 104 million metric tons of emissions remaining in 2030 absent policy intervention, a gap of 42 million metric tons CO<sub>2</sub>e. *See* "Decarbonizing Colorado: Evaluating Cap and Trade Programs to meet Colorado's Emissions Targets" (Resources for the Future, July 2020). In addition, the state has engaged a contractor, Energy and Environmental Economics (E3) that is working on Colorado's GHG Pollution Reduction Roadmap. While this Roadmap is a work in progress, the Draft released in September 2020 also appears to predict a significant gap absent additional measures. The Roadmap presents two sets of "business-as-usual" projections. Under the most optimistic case (the 2019 Action Scenario that incorporates a number of currently unenforceable assumptions) and using unofficial

baseline adjustments, there is still a roughly 15 mmt CO<sub>2</sub>e gap in 2025 and a 35 mmtCO<sub>2</sub>e gap in 2030.

While different predictive tools utilize varying methodologies and each tool has some inherent limitations, it is clear that, under any scenario, Colorado must do more to ensure that it meets the statutory targets. A failure to meet Colorado's 2025 emission reduction goal would place the Commission and the state out of compliance with statutory requirements and would only increase the likelihood of failure to meet targets in subsequent years. Thus, it is imperative that the Commission initiate processes to promulgate comprehensive GHG emission control regulations now.

This proposed part establishes an emission limit across most of Colorado's major sources of greenhouse gas emissions, while enabling the use of an emissions trading system for compliance with that limit. The limit is set to meet Colorado's GHG reduction targets, making conservative assumptions about projected emissions from sources not subject to the limit over the course of the upcoming decade. Entities that are subject to this regulation will be required to meet a compliance obligation for each compliance period. On an annual basis, each subject entity must report its emissions and the emissions for which it is responsible and surrender the appropriate number of compliance instruments to account for its emissions or the emissions for which it is responsible. Compliance instruments may be either allowances or offset credits, with certain restrictions. To fulfill statutory requirements to adopt strategies designed to address harmful air pollution in disproportionately impacted communities, the proposed part provides for allocation of valuable emissions allowances to pollution-monitoring and pollution-mitigation projects in these communities. Moreover, it requires greenhouse gas emission reductions—commensurate with the decline in the state's greenhouse gas emission levels—from any facility that adversely affects a disproportionately impacted community and violates an air pollution standard. The same greenhouse gas reduction requirement applies to any facility that contributes to unacceptable adverse cumulative air pollution impacts on a disproportionately impacted community. As facilities reduce their greenhouse gas emissions, emissions of other harmful air pollutants that are correlated with greenhouse gas emissions will also decline.

## **OUTSTANDING ISSUES:**

Petitioner conducted its own outreach and also coordinated with the Division regarding stakeholder outreach. As a result of this outreach, some stakeholders expressed a desire to expand this program to include at least some oil and gas production sources. EDF is committed to working with stakeholders to explore this issue during the rulemaking, as achieving reductions from oil and gas production sources is a critical imperative. The structure of the proposed amendments to Regulation 22 is flexible and amending the proposal to expand coverage to additional sources is feasible. EDF recommends that the notice for the rulemaking be sufficiently broad to allow for oil and gas production sources to potentially be considered during the rulemaking, which would allow parties to propose that expanded coverage as an alternative. Even if such sources are included as covered sources under proposed Regulation 22, Part C, the Commission should still pursue direct regulation of those sources pursuant to the statutory directives to achieve deep reductions in methane from oil and gas production facilities and the transmission sector, including the rulemaking planned for the fall of 2021.

In addition, some stakeholders inquired about the intended approach to define or identify low-income customers, including with regard to allowance allocation to utilities for the benefit of their low-income customers. Some stakeholders suggested looking to the Transportation Electrification Plan (TEP) of Public Service Company of Colorado (PSCo), which was recently approved by the Colorado Public Utilities Commission. Pursuant to a partial settlement in that proceeding adopted by numerous, diverse stakeholders, PSCo will use a broad set of categories to identify and qualify income-qualified customers eligible for additional programs and incentives under the TEP. EDF is committed to working with stakeholders to exploring the approach used in the TEP proceeding and determining whether or how it could be applied in the proposed Part C.

Finally, the Division and Public Service Company of Colorado (PSCo) have raised an interest in providing electric utilities that have approved Clean Energy Plans (CEPs) with allowances sufficient to cover the remaining emissions on their system associated with wholesale sales. Currently Part C as proposed provides for an allocation methodology consistent with the statutory requirements of the Air Pollution Prevention and Control Act—allocation to utilities implementing a CEP for any emissions remaining on the system *associated with retail sales*. The Commission does have the discretion to apply a regulatory “safe harbor” to other emissions as well. A change in the allocation methodology could be accommodated under the framework, and EDF is committed to having further conversations with stakeholders on this topic.

**ATTACHMENTS:**

- Memorandum of Notice
- Proposed Regulation Language – Regulation 22, Part A, Part C
- Proposed Statement of Basis, Specific Statutory Authority and Purpose
- Initial Economic Impact Analysis
- Range of Regulatory Alternatives (Included in Memorandum of Notice)

**CONTACT:**

Please contact Pam Kiely, Senior Director of Regulatory Strategy, US Climate, EDF at [pkiely@edf.org](mailto:pkiely@edf.org) or 202.572.3284 with any questions.

**SIGNATURES:**

Commented [TAB1]: Pam should sign.



Preparer (Pam Kiely)

2/4/21

Date

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Supervisor

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Date

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Program Manager

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Date

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Division Director

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Date