**DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT**
**Air Quality Control Commission REGULATION NUMBER 22**

**Colorado Greenhouse Gas Reporting and Emission Reduction Requirements**

**5 CCR 1001-26**

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Outline of Regulation

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Pursuant to Colorado Revised Statutes Section 24-4-103 (12.5), materials incorporated by reference are available for public inspection during normal business hours, or copies may be obtained at a reasonable cost from the Air Quality Control Commission (the Commission), 4300 Cherry Creek Drive South, Denver, Colorado 80246-1530. The material incorporated by reference is also available through the United States Government Printing Office, online at www.gpo.gov/fdsys. Materials incorporated by reference are those editions in existence as of the date indicated and do not include any later amendments.

Unless otherwise indicated, any incorporation by reference of provisions of Title 40 of the Code of Federal Regulations (CFR) are to the edition effective as of July 1, 2019.

## PART A Greenhouse Gas Reporting

I. General Provisions

I.B. This regulation establishes mandatory greenhouse gas (GHG) monitoring, recordkeeping and reporting requirements for owners and operators of certain facilities that directly emit GHGs, ~~and~~ retail or wholesale electric service providers, and fuel importers and suppliers.

I.C. Suppliers and importers will be required to report GHGs based upon the quantity that would be associated with combustion or use of the products supplied.

II. Definitions

II.A. "Anaerobic process" means a procedure in which organic matter in wastewater, wastewater treatment sludge, or other material is degraded by microorganisms in the absence of oxygen, resulting in the generation of carbon dioxide ($CO_2$) and methane ($CH_4$). This source category consists of the following: anaerobic reactors, anaerobic lagoons, anaerobic sludge digesters, and biogas destruction devices (for example, burners, boilers, turbines, flares, or other devices).

II.B. "Biomass-derived fuel," for purposes of this Regulation 22, Part A, means fuel that is derived from biomass products and byproducts, wastes, and residues from plants, animals, and microorganisms.

II.C~~B~~. "Carbon Dioxide Equivalent (CO2e)" means a metric measure used to compare the emissions from various GHGs based upon their global warming potential (GWP). CO2e is determined by multiplying the mass amount of emissions (metric tons per year), for each GHG constituent by that gas's GWP, and summing the resultant values to determine CO2e (metric tons per year).

II.D~~C~~. "CFR" means Code of Federal Regulations.

II.E~~D~~. "Counterparty" means a marketer, utility, or other entity with whom an energy transaction occurs or a market operator responsible for settlement in an organized market.

II.F~~E~~. "Designated representative" means an individual selected by an agreement binding on the owners and operators of such facility or supplier and acting in accordance with the certification statement in Section IV.B.6.

II.G~~F~~. "Domestic Wastewater Treatment Plant" has the same meaning as defined by the Water Quality Control Commission in 5 Code of Colo. Regs. (CCR) 1002-22 (September 30, 2009).

II.H~~G~~. "Electric service provider" or "electric utility" means any corporation, agency, or other legal entity that generates electricity for sale through combustion of fossil fuels or sells electricity for retail or wholesale use, including imported, exported, or in-state electricity, in the State of Colorado. Electric service provider or electric utility does not include an entity that generates electricity which is consumed solely at the facility or complex where the generation occurs.

II.I~~H~~. "Emergency generator" means a stationary combustion device, such as a reciprocating internal combustion engine or turbine that serves solely as a secondary source of mechanical or electrical power whenever the primary energy supply is disrupted or discontinued during power outages or natural disasters that are beyond the control of the owner or operator of a facility. An emergency generator operates only during emergency situations, for training of personnel under simulated emergency conditions, as part of emergency demand response procedures, or for standard performance testing procedures as required by law or by the generator manufacturer. A generator that serves as a back-up power source under conditions of load shedding, peak shaving, power interruptions pursuant to an interruptible power service agreement, or scheduled facility maintenance is not considered an emergency generator.

II.J~~I~~. "Energy Transaction" means a specified quantity of electricity purchased or sold at a known transaction point or through an organized market.

II.K~~J~~. "Exported electricity" means electricity generated inside the State of Colorado and delivered to serve load located outside the State of Colorado. Exported electricity does not include electricity that is generated outside the State of Colorado, is transmitted through the State of Colorado, and with the final point of delivery outside the State of Colorado.

II.L~~K~~. "Facility" means any physical property, plant, building, structure, source, or stationary equipment located on one or more contiguous or adjacent properties in actual physical contact or separated solely by a public roadway or other public right of way and under common ownership or common control, that emits or may emit any greenhouse gas. Operators of military installations may classify such installations as more than a single facility based on distinct and independent functional groupings within contiguous military properties.

II.M~~L~~. “Food processing” means an operation used to manufacture or process meat, poultry, fruits, and/or vegetables as defined under NAICS 3116 (Meat Product Manufacturing) or NAICS 3114 (Fruit and Vegetable Preserving and Specialty Food Manufacturing). For information on NAICS codes, see http://www.census.gov/eos/www/naics/ (as published January 30, 2020).

II.N. “Fuel importer” means an owner or operator of any facility or entity that imports gasoline, special fuel (including natural gas), or biomass-derived fuel into Colorado from outside the state and does not deliver that fuel to a fuel supplier.

II.O. “Fuel supplier” means an owner or operator of any facility or entity that owns and stores gasoline, special fuel (including natural gas), or biomass-derived fuel in a terminal or refinery in this state.

II.P. “Gasoline,” for purposes of this Regulation 22, Part A, means any flammable liquid used as a fuel for any purpose including but not limited to heating, cooking, and the propulsion of motor vehicles, motor boats, non-road engines, or aircraft, including kerosene-based aircraft fuel. “Gasoline” does not include special fuel as defined in Section II.HH. of this Regulation 22, Part A. Except as otherwise provided in this Section II.P., any product blended with gasoline shall be considered gasoline for purposes of this Regulation 22, Part A.

II.Q~~M~~. “Global warming potential” or “GWP” means the ratio of the time-integrated radiative forcing from the instantaneous release of one kilogram of a trace substance relative to that of one kilogram of a reference gas, i.e., ($CO_2$). For the GHG emissions calculations requirements of this rule, the GWP values that must be used are as specified in Table A-1 to Subpart A of Title 40 CFR Part 98.

II.R~~N~~. “Greenhouse gas” or “GHG” means carbon dioxide ($CO_2$), methane ($CH_4$), nitrous oxide ($N_2O$), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), sulfur hexafluoride (SF6) and Nitrogen Trifluoride (NF3).

II.S~~O~~. “Hydrofluorocarbons (HFCs)” means a class of GHGs consisting of hydrogen, fluorine, and carbon.

II.T~~P~~. “In-state electricity” means electricity generated inside the State of Colorado and delivered to serve load within the State of Colorado. In-state electricity does not include electricity that is generated outside the State of Colorado, is transmitted through the State of Colorado, and with the final point of delivery outside the State of Colorado.

II.U~~Q~~. “Industrial waste landfill” means a landfill other than a municipal solid waste landfill, a Resource Conservation and Recovery Act (RCRA) Subtitle C hazardous waste landfill, or a Toxic Substance Control Act (TSCA) hazardous waste landfill, in which industrial solid waste, such as RCRA Subtitle D wastes (non-hazardous industrial solid waste, defined in 40 CFR § 257.2 (May 30, 2017)), commercial solid wastes, or conditionally exempt small quantity generator wastes, is placed. An industrial waste landfill includes all disposal areas at the facility.

II.V~~R~~. “Industrial wastewater treatment” means use of anaerobic processes to treat industrial wastewater and industrial wastewater treatment sludge at pulp and paper manufacturing, food processing, ethanol production and petroleum refining facilities. Industrial wastewater treatment does not include municipal wastewater treatment plants or separate treatment of sanitary wastewater at industrial sites.

II.W~~S~~. “Imported electricity” means electricity generated outside the State of Colorado and delivered to serve load within the State of Colorado. Imported electricity does not include electricity that is generated outside the State of Colorado, is transmitted through the State of Colorado, and with the final point of delivery outside the State of Colorado.

II.X~~T~~. "Local distribution company" or "LDC" means a company that owns or operates distribution pipelines, not interstate pipelines or intrastate pipelines, that physically deliver natural gas to end users and that are within a single state that are regulated as separate operating companies by State public utility commissions or that operate as independent municipally-owned distribution systems. LDCs do not include pipelines (both interstate and intrastate) delivering natural gas directly to major industrial users and farm taps upstream of the local distribution company inlet.

II.Y~~U~~. "Metric ton" means a common international measurement for mass equal to 1,000 kilograms, which is equivalent to 2204.6 pounds or 1.1 short tons.

II.Z~~V~~. "Municipal solid waste landfill" or "MSW landfill" means an entire disposal facility in a contiguous geographical space where household waste is placed in or on land. An MSW landfill may also receive other types of RCRA Subtitle D wastes (40 CFR § 257.2 (May 30, 2017)) such as commercial solid waste, non-hazardous sludge, conditionally exempt small quantity generator waste, and industrial solid waste. Portions of an MSW landfill may be separated by access roads, public roadways, or other public right-of-ways. An MSW landfill may be publicly or privately owned.

II.AA~~W~~. "Natural gas transmission and storage" has the same meaning as "natural gas transmission and storage segment" as defined in Air Commission Regulation Number 7, Part D, Section IV.A. (effective February 14, 2020).

II.BB~~X~~. "North American Industry Classification System (NAICS) code(s)" means the six-digit code(s) that represents the product(s)/activity(s)/service(s) at a facility or supplier as listed in the Federal Register and defined in "North American Industrial Classification System Manual 2007," available from the U.S. Department of Commerce, National Technical Information Service, Alexandria, VA 22312 and http://www.census.gov/eos/www/naics/ (as published January 30, 2020).

II.CC~~Y~~. "Oil and natural gas operations and equipment" means the equipment and activities listed in AQCC Regulation Number 7, Part D, Section V.C. (effective February 14, 2020).

II.DD~~Z~~. "Perfluorocarbons (PFCs)" means a class of greenhouse gases consisting on the molecular level of carbon and fluorine.

II.EE~~AA~~." Research and development" means those activities conducted in process units or at laboratory bench-scale settings whose purpose is to conduct research and development for new processes, technologies, or products and whose purpose is not for the manufacture of products for commercial sale, except in a de minimis manner.

II.FF~~BB~~." Responsible official" means the definition of that term found in the Air Quality Control Commission's Common Provisions Regulation (effective January 14, 2016).

II.GG~~CC~~. "Retail utility" means an electric service provider or electric utility that sells electricity to end-use customers or ratepayers.

II.HH "Special fuel," for purposes of this Regulation 22, Part A, means diesel engine fuel, kerosene, liquefied petroleum gas, and natural gas used for any purpose including but not limited to heating, cooking, and the generation of power to propel a motor vehicle, motor boat, or non-road engine. "Special fuel" does not include gasoline as defined in Section II.P of this Regulation 22, Part A and does not include kerosene used as aviation fuel.

II.II~~DD~~. "Supplier" means a producer within the state, importer to Colorado from outside the state, or exporter from Colorado in any supply category included in Table A-5 of Subpart A, 40 CFR Part 98, as defined by the appropriate subpart in 40 CFR Part 98.

II.JJ "Terminal" means a motor vehicle fuel or diesel fuel storage and distribution facility that is supplied by pipeline, rail, or vehicle, and from which fuel may be removed at a rack. "Terminal" includes a fuel production facility where motor vehicle or diesel fuel is produced and stored and from which fuel may be removed at a rack.

II.KK~~EE~~. "Transaction Point" means a recognized electrical location where seller agrees to deliver energy and purchaser agrees to receive energy for bilateral trades or settlement schedules regardless of market type or an identified settlement location or settlement area in an organized market.

II.LL~~FF~~. "Unspecified Energy" is electricity that is not traceable to a specific generating facility, such as electricity traded through open market transactions. This electricity is typically a mix of resource types, and may include renewables.

II.MM~~GG~~. "Wholesale utility" means an electric service provider or electric utility that sells electricity or energy to a retail utility or other wholesale utility.

II.NN~~HH~~. "Year" means calendar year.

III. Applicability and Emissions Quantification for Affected Sources.

III.A. The GHG monitoring, recordkeeping, and reporting requirements of this rule apply to the owners and operators of any facility or entity that is located in the State of Colorado and that meets any of the following requirements:

III.A.1 Any electric service provider or electric utility, regardless of annual GHG emission quantities. GHGs reported must include all emissions from electricity generation and transmission and distribution equipment, not including emergency generators.

III.A.2 Any local distribution company distributing natural gas in the State of Colorado, regardless of annual GHG emission quantities.

III.A.3 Any fuel importer or fuel supplier importing or supplying fuel, the full combustion or oxidation of which would create 25,000 metric tons or more CO2e annually. The GHGs reported must be based on the quantity of fuel distributed or sold in the State of Colorado. Emissions reporting is not required for fuel the emissions from which have been reported under this Regulation 22, Part A, as demonstrated by the fuel importer or fuel supplier.

III.A.4~~3~~ Any industrial waste landfill active at any point during the year, regardless of annual GHG emission quantities. Inert material facilities as defined under 6 CCR 1007-2, Part 1 (November 30, 2019), are exempt from the requirements of this regulation. The GHGs reported must include emissions from the landfill, landfill gas collection systems, and destruction devices for landfill gases

III.A.5~~4~~ Any industrial wastewater treatment, regardless of annual GHG emission quantities.

III.A.6~~5~~ Any underground coal mine meeting the source category definition for an underground coal mine in Subpart FF of 40 CFR, Part 98 at any point during the year and regardless of annual GHG emission quantities.

III.A.76 Any facility or supplier not covered under Sections III.A.1. through III.A.6. or III.C. that is required to report under 40 CFR Part 98 as incorporated herein must report GHGs directly to the State of Colorado to the same extent as reported under 40 CFR Part 98. The requirement to report pursuant to 40 CFR, Part 98 as incorporated herein continues to apply regardless of future revisions to 40 CFR, Part 98.

III.A.8~~7~~ Any municipal solid waste landfill not required to report under 40 CFR Part 98 may voluntarily report GHGs. The GHGs reported must include emissions from the landfill, landfill gas collection systems, and destruction devices for landfill gases.

III.A.9~~8~~ Any domestic wastewater treatment plant may voluntarily report GHGs.

III.A.10 ~~9~~ Any agricultural operation may voluntarily report GHGs or operational information sufficient to allow the Division to determine GHGs.

III.A.11 ~~10~~ Research and development activities are excluded from GHG reporting requirements.

III.B. To quantify GHG emissions for the reporting purposes of this rule, the owner or operator of a facility or an entity identified in Paragraph III.A of this section must calculate GHG emissions by year as described below, and any reporting requirement under 40 CFR, Part 98 and its Subparts as incorporated herein continue to apply regardless of future revisions to 40 CFR, Part 98.

III.B.1 For an electric service provider or electric utility identified in Section III.A.1., GHG emissions must be calculated using the applicable calculation methodologies and appropriate equations specified in Subparts C, D, and DD of 40 CFR, Part 98.

III.B.2 For a local distribution company identified in Section III.A.2., GHG emissions must be calculated using the applicable calculation methodologies specified in Subparts W and NN of 40 CFR, Part 98.

III.B.3 For a fuel importer or fuel supplier identified in Section III.A.3., GHG emissions must be calculated using the methodologies specified in Subpart MM or NN of 40 CFR, Part 98.

III.B.4~~3~~ For an industrial waste landfill identified in Section III.A.~~3~~4., GHG emissions must be calculated according to Subpart C, if applicable, and Subpart TT of 40 CFR, Part 98.

III.B.54 For industrial wastewater treatment identified in Section III.A.~~4~~5., GHG emissions must be calculated according to Subpart C, if applicable, and Subpart II of 40 CFR, Part 98.

III.B.6~~5~~ For an underground coal mine identified in Section III.A.~~5~~6., GHG emissions must be calculated according to Subpart C, if applicable, and Subpart FF of 40 CFR, Part 98.

III.B.7~~6~~ For a facility or supplier included pursuant to Section III.A.~~6~~7., GHG emissions must be calculated using the calculation methodologies specified in each applicable Subpart of 40 CFR, Part 98.

III.B.8~~7~~ For a municipal solid waste landfill identified in Section III.A.~~7~~8., GHG emissions must be calculated according to Subpart C, if applicable, and Subpart HH of 40 CFR, Part 98.

III.B.9~~8~~ For a domestic wastewater treatment plant identified in Section III.A.~~8~~9., GHG emissions must be calculated using GHG emission estimating protocols acceptable to the Division.

III.B.10 ~~9~~ For an agricultural operation identified in Section III.A.~~9~~10., reported GHG emissions or operational information must utilize emission calculation protocols that are acceptable to the Division and applicable to the specific activities or types of operations in the agricultural sector.

III.C. Oil and Natural Gas Reporting Requirements:

III.C.1 Oil and natural gas operations and equipment at or upstream of a natural gas processing plant are not subject to Sections III.A, III.B, IV, and V of this regulation and must report GHG emissions to the State of Colorado according to the requirements of AQCC Regulation Number 7, Part D, Section V. (effective February 14, 2020). Records of information included in reports submitted pursuant to AQCC Regulation Number 7, Part D, Section V. (effective February 14, 2020) must be maintained for a period of two (2) years and made available to the Division upon request.

III.C.2 Natural gas transmission and storage are not subject to Sections III.A, III.B, IV and V of this regulation and must report GHG emissions according to the requirements of AQCC Regulation Number 7, Part D, Section IV. (effective February 14, 2020).

IV. Reporting Requirements

IV.A. Owners and operators of facilities or entities identified in Section III.A. must submit a report of all GHG emissions or supply in the previous calendar year. GHG emissions or supply must be reported utilizing Division-approved format or forms.

IV.A.1 The first report for owners and operators of facilities or entities required to report for calendar year 2020 pursuant to 40 CFR, Part 98 is due on or before March 31, 2021 (and by March 31 every year thereafter).

IV.A.2 Owners and operators of facilities or entities covered by Sections III.A.1 through III.A.7~~5~~. must report to the Division even if their emissions are below the reporting thresholds of 40 CFR, Part 98. The first report for owners and operators of facilities or entities under Sections III.A.1. through III.A.7~~5~~. that were not required to submit a federal report for calendar year 2020 pursuant to 40 CFR, Part 98 is due on or before March 31, 2022 for calendar year 2021 (and by March 31 every year thereafter).

IV.A.3 Owners and operators of facilities or entities under Sections III.A.8~~7~~. through III.A.10~~9~~. may report for any year. GHG emissions reported under this Section IV.A.3. must be submitted by March 31 for the prior year.

IV.B. GHG reports submitted must include the following:

IV.B.1 Individual GHG constituents (in metric tons per year) and aggregated CO2e emissions.

IV.B.2 AIRS ID if assigned to a subject facility, along with the facility name, entity name or supplier name (as appropriate), and physical street address of the facility, entity or supplier, including the city, State, and zip code. If the facility does not have a physical street address, then the facility must provide the latitude and longitude representing the geographic centroid or center point of facility operations in decimal degree format. This must be provided in a comma-delimited “latitude, longitude” coordinate pair reported in decimal degrees to at least four digits to the right of the decimal point.

IV.B.3 NAICS code(s) that apply to the facility or supplier, including the primary NAICS code and any additional NAICS code(s).

IV.B.4 Year and months covered by the report.

IV.B.5 Date of submission.

IV.B.6 Certification statement signed and dated by a responsible official, or their designated representative, that identifies the individual’s title and contact information and attests that the report being submitted is true, accurate and complete to the best of the certifying individual’s knowledge.

IV.C. In addition to the information required under Section IV.B., electric service providers and electric utilities must also report the following information for the prior year using Division-approved forms by no later than June 30 of each year:

IV.C.1 Beginning June 30, 2022, data elements necessary for the Division to determine GHG emissions attributable to imported and exported electricity. The reporting requirements in this subsection track emissions associated with imports and exports in order to attribute GHG emissions from electricity delivered to customers in the State of Colorado, and determine GHG emissions from electricity exported out of the state. Emissions from imports and exports also informs the development, assessment, and refinement of strategies to achieve the statewide greenhouse gas targets and may assist local organizations with GHG planning efforts.

IV.C.1.a. In reporting the requirements of this Section IV.C.1., the electric service provider or electric utility will:

IV.C.1.a.(i) Use the reporting form published by the Division to report annualized data in a consistent format.

IV.C.1.a.(ii) Use the most detailed data readily available for business purposes when determining the annual reported values including, but not limited to, short or long term contracts, internal tracking systems for energy transactions between counterparties or through organized markets, or for other regulatory reporting requirements to the Colorado Public Utilities Commission, US EPA, Energy Information

Administration, or Federal Energy Regulatory Commission.

IV.C.1.a.(iii) Use the most specific data sources in the published form for assigning GHG emissions to imports and exports of unspecified energy, electricity acquired through contract obligations, market electricity purchased or sold from a pooled group of resources, or renewable energy for which a renewable energy credit is not included with the purchase or sale. Data sources may include defined contractual requirements, facility specific or portfolio GHG emissions factors, published balancing authority or regional emissions intensity factors, or other data sources approved in advance by the Division.

IV.C.1.a.(iv) Not be required to report duplicative information from generation facilities, wholesale utilities, and retail utilities under common ownership of an electric service provider or electric utility.

IV.C.1.b. The annual data elements to be reported pursuant to Section IV.C.1. include but are not limited to:

IV.C.1.b.(i) For each fossil fuel fired generation facility, the Total Gross Megawatt-hours (MWh) generated at the facility and Net MWh received by each entity with an ownership stake in the facility, which must be reported by the entity with operational control.

IV.C.1.b.(ii) For each electric utility or electric service provider, the following information, aggregated by Counterparty, where applicable:

IV.C.1.b.(ii)( ) For all imported electricity, the quantity of electricity, and associated GHG emissions, including the emissions factors and emissions-factor basis, imported directly from owned generation or contracted generation located outside the State of Colorado, the quantity of electricity and associated GHG emissions, including the emissions factors and emissions-factor basis, purchased at Transaction Points located outside the State of Colorado and imported into Colorado, and the quantity of electricity and associated GHG emissions, including the emissions factors and emissions-factor basis, sold from out of state generation at Transaction Points within the State of Colorado;

IV.C.1.b.(ii)(A) For all exported electricity, the quantity of electricity, and associated GHG emissions, including the emissions factors and emissions-factor basis, delivered to Transaction Points outside the State of Colorado; and

IV.C.1.b.(iii) For each wholesale or retail utility, the quantity of renewable energy credits including vintage year acquired and transferred through energy transactions, sold, or retired to meet Colorado renewable energy standards.

IV.C.2 The data elements necessary for the Division to track the progress of GHG reductions from plans that have been approved by the Public Utilities Commission, including but not limited to Clean Energy Plans filed in accordance with § 40-2-125.5, C.R.S. (May 30, 2019). Progress tracking after a plan has been approved will inform development, assessment, and refinement of strategies to achieve the statewide greenhouse gas targets. Data collection pursuant to this Section IV.C.2. begins on January 1 of the year following approval of a plan, and the first report is due no later than June 30 of the year following the first year of data collection and annually thereafter.

IV.C.2.a. In reporting the requirements of this Section IV.C.2., the electric service provider or electric utility will:

IV.C.2.a.(i) Use the annual reporting form published by the Division, which is to be consistent with the methods, forms, or reports used for filings to the Public Utilities Commission.

IV.C.2.a.(ii) Use references to information submitted to the Public Utilities Commission as support for data elements reported on the form in lieu of submitting duplicative information to the Division.

IV.C.2.b. The data elements that must be reported pursuant to Section IV.C.2. include, but are not limited to:

IV.C.2.b.(i) Calculations of percent CO2 and percent GHG reductions from the 2005 baseline emissions approved in the plan. For utilities that conduct both retail and wholesale sales, percent reduction calculations must be provided based on retail sales only as well as for total combined retail and wholesale sales.

IV.C.2.b.(ii) A statement of the GHG accounting methodology used in the approved plan and percent reduction calculations, and any changes to that methodology if they occur for the reporting year. If methodology changes occur, supporting data for both the reporting year and baseline year must be provided to verify the percent reduction calculations.

IV.C.2.b.(iii) Changes in service territory from that identified in the approved plan that may impact the baseline values and percent reduction calculations.

IV.C.2.b.(iv) Plan Revisions filed with the Public Utilities Commission that are awaiting approval.

IV.C.2.b.(v) The number of renewable energy credits used for compliance with a Clean Energy Plan with the same vintage as the reporting year, that are generated and retired during the year.

IV.D. Report Revisions Due to Substantive Errors

IV.D.1 A substantive error is an error that impacts the quantity of GHG emissions reported or otherwise prevents the reported data from being validated or verified.

IV.D.2 If one or more substantive errors as defined in Section IV.D.1. are discovered in a previously submitted GHG report by an entity responsible for preparing or submitting the report, or providing data for the report, the Division must be notified in writing of the errors within five (5) business days of discovery of the errors and a revised report that corrects the substantive errors must be submitted within forty-five (45) days of the discovery of the errors.

IV.D.3 If the Division identifies substantive errors in a submitted report, the Division may notify the entity responsible for the report of the errors and a revised report that corrects the substantive errors must be submitted within forty-five (45) days of the notification.

IV.D.4 The Division may provide reasonable extensions of the forty-five day (45) period for submission of a revised report on a case-by-case basis when requested in writing by the reporting entity. The extension request must include details on why the request is being made and the additional requested time needed to submit the revised report.

V. Recordkeeping Requirements

V.A. All data elements and reports listed below must be retained by the owners and operators of facilities or entities reporting under Section III.A. and be provided to the Division upon request:

V.A.1 All records of supporting documentation used to prepare and submit the GHG report, including but not limited to:

V.A.1.a. All units, operations, processes, and activities for which GHG emissions were calculated.

V.A.1.b. Operating data, fuel use records, or process information used for GHG emissions calculations.

V.A.1.c. GHG emissions calculations and methods used, including a written explanation if emission calculation methodologies used during the reporting period are changed.

V.A.1.d. Any records required to be retained pursuant to Subpart A of 40 CFR, Part 98 and the applicable Subparts of 40 CFR, Part 98 identified in Section III.B.

V.A.2 Reports submitted pursuant to the requirements of Section IV.

V.B. Records required under this Section V. must be maintained for five (5) years from the date of submission of the annual GHG report.

## PART B Greenhouse Gas Emission Reduction Requirements

[*Omitted for brevity*]

## PART C Colorado Greenhouse Gas Emission Reduction Program

I. Definitions

I.A. The following definitions shall apply to this Part C:

I.A.1 "Accounts administrator" means the entity acting in the capacity to administer the accounts identified in this Part C. This may be the Division or may be an entity with which the Division enters into a contract.

I.A.2 "Activity-shifting leakage" means increased GHG emissions or decreased GHG removals that result from the displacement of activities or resources from inside an offset project's boundary to locations outside such offset project's boundary as a result of the offset project activity.

I.A.3 "Additional" means, in the context of Colorado offset credits, GHG emission reductions or removals that exceed any GHG emission reductions or removals otherwise required by law, regulation or legally binding mandate, and that exceed any greenhouse gas emission reductions or removals that would otherwise occur in a conservative business-as-usual scenario.

I.A.4 "Allowance" means a limited tradable authorization to emit up to one metric ton of carbon dioxide equivalent.

I.A.5 "Alternate account representative" means an individual designated pursuant to Section III. to take actions on an entity's accounts.

I.A.6 "Annual allowance budget" means the number of Colorado GHG allowances associated with one year of the program.

I.A.7 "Auction" means the process of selling Colorado GHG allowances by offering them up for bid, taking bids, and then distributing the allowances to winning bidders.

I.A.8 "Auction administrator" means the person or entity designated by the program director to administer the auction.

I.A.9 "Auction purchase limit" means the limit on the number of allowances one entity or a group of affiliated entities may purchase from the share of allowances sold at a quarterly auction

I.A.10 "Auction reserve price" means the minimum price for the sale of allowances. The price in 2022 shall be set by the program director, following appropriate process and stakeholder input, to help secure cost-effective near-term reductions, and shall increase annually by 5 percent plus the rate of inflation as measured by the most recently available twelve months of the Consumer Price Index for All Urban Consumers.

I.A.11 "Auction settlement price" means the price announced by the auction administrator at the conclusion of each quarterly auction. It is the price that all successful bidders will pay for their allowances and also the price to be paid to those entities which consigned allowances to the auction.

I.A.12 "Banking" means the holding of compliance instruments from one compliance period for the purpose of sale or surrender in a future compliance period.

I.A.13 "Baseline emissions" means, for purposes of calculating a facility's required reduction of GHG emissions under Section PART CIV.F., as applicable, the facility's average annual emissions of CO2e during the three years immediately preceding the prior year. If insufficient data are available to calculate a facility's baseline emissions, the Division may estimate baseline emissions using available data, emission rates, and reasonable assumptions as to the facility's output during the three years immediately preceding the prior year as if the facility had been operating and/or reporting emissions during those three years.

I.A.14 "Best available emission control technologies" or "BACT" means emission controls that achieve the maximum degree of reduction for a pollutant while taking into account technical feasibility and economic, environmental, and energy impacts, as determined by the Division. In no event shall BACT be less stringent than the U.S. Environmental Protection Agency's or other permitting authority's determination of BACT, as defined at 42 U.S.C. 7479(3), for any comparable source.

I.A.15 "Business-as-usual" means the set of conditions reasonably expected to occur in the absence of the program, taking into account all current laws and regulations, as well as current economic and technological trends.

I.A.16 "Calendar year" means the time period from January 1 through December 31.

I.A.17 "Cap" means the total number of Colorado allowances that the program director issues over a given period of time.

I.A.18 "Carbon dioxide" or "CO2" means the most common of the primary greenhouse gases, consisting on a molecular level of a single carbon atom and two oxygen atoms.

I.A.19 "Carbon dioxide equivalent" or "CO2e" shall have the meaning set forth in Part A.

I.A.20 "Clean energy plan" means a clean energy plan as defined in Section 40-2-125.5(2)(a), C.R.S.

I.A.21 "Colorado Climate Board" or "Board" means the Colorado Climate Board created in Section XII.

I.A.22 "Colorado offset credit" means a tradable compliance instrument issued pursuant to Section IX. that represents a GHG emission reduction or GHG removal enhancement of one metric ton of CO2e. The GHG emission reduction or GHG removal enhancement must be real, additional, quantifiable, permanent, verifiable, and enforceable.

I.A.23 "Compliance account" means an account created by the accounts administrator for a covered entity to which the entity transfers compliance instruments to meet its compliance obligations.

I.A.24 "Compliance instrument" means an allowance or offset that may be used to meet the requirements of this Program. Each compliance instrument can be used to fulfill a compliance obligation equivalent to up to one metric ton of CO2e. Compliance instruments include allowances and offsets issued under this program and those from any external program which Colorado has linked this program to pursuant to Section XI.

I.A.25 "Compliance offset protocol" means an offset protocol approved by the Commission.

I.A.26 "Compliance period" means the period for which the compliance obligation is calculated for covered entities. The compliance obligation for the first compliance period considers emissions from calendar years 2022 and 2023. Subsequent compliance periods cover consecutive three-year periods, starting with the second compliance period which considers emissions from calendar years 2024, 2025, and 2026.

I.A.27 "Conservative" means utilizing project baseline assumptions, emission factors, and methodologies that are more likely than not to understate net GHG emission reductions or GHG removal enhancements to address uncertainties that affect the calculation or measurement of GHG emission reductions or GHG removal enhancements.

I.A.28 "Consumer Price Index for All Urban Consumers" means a measure that examines the changes in the price of a basket of goods and services purchased by urban consumers, and is published by the U.S. Bureau of Labor Statistics.

I.A.29 "Cost-control account" means the holding account under the control of the program director in which allowances used for cost-control pursuant to the auctions in Section VII. are held.

I.A.30 "Cost-control price" means the price that an auction must meet or exceed for allowances in the cost-control account to be added to that auction. In no event shall allowances in the cost-control account be sold for less than the cost-control price. The cost-control price each year shall be set by the program director, following an appropriate process with stakeholder input, but may not be set lower than any previous cost-control price.

I.A.31 "Covered entity" means an entity within Colorado that has one or more of the processes or operations listed under Section II.A.1. and has a compliance obligation as specified in Section IV.; and that has met the threshold level specified in Section PART CII.B.

I.A.32 "Crediting period" means the pre-determined period for which an offset project will remain eligible to be issued Colorado offset credits for verified GHG emission reductions or GHG removal enhancements.

I.A.33 “Data year” means the calendar year in which emissions occurred.

I.A.34 “Disproportionately impacted community” means those communities that meet the definition contained in Section 25-7-105(1)(e)(III), C.R.S.

I.A.35 “Division” means the Air Pollution Control Division of the Colorado Department of Public Health and the Environment.

I.A.36 “Division-accredited verification body” means an entity that meets the accreditation requirements established by the Division.

I.A.37 “Electricity generating facility” means a facility that generates electricity and includes one or more generating units at the same location.

I.A.38 “Electricity importer” means an entity that delivers imported electricity for ultimate use by Colorado retail customers. For electricity that is scheduled with a NERC e-Tag to a final point of delivery inside the state of Colorado, the electricity importer is identified on the NERC e-Tag as the purchasing-selling entity (PSE) on the last segment of the tag’s physical path with the point of receipt located outside the state of Colorado and the point of delivery located inside the state of Colorado. For facilities physically located outside the state of Colorado with the first point of interconnection to a Colorado balancing authority’s transmission and distribution system when the electricity is not scheduled on a NERC e-Tag, the importer is the facility operator or scheduling coordinator. For electricity that is imported into Colorado through an energy imbalance market (EIM), the electricity importer is identified as the scheduling coordinator participating in the EIM whose transactions result in electricity imports into Colorado. For electricity that is imported into Colorado through a wholesale electric power market, the electricity importer is identified as the scheduling coordinator participating in the wholesale electric power market whose transactions result in electricity imports into Colorado.

I.A.39 “Eligible Indian tribe” means the Southern Ute Indian Tribe of the Southern Ute Reservation or the Ute Mountain Tribe of the Ute Mountain Reservation.

I.A.40 “Emissions” means the release of greenhouse gases into the atmosphere from processes in a facility or source, including from the combustion of transportation fuels such as natural gas, petroleum products, and natural gas liquids. In the context of offsets, “emissions” means the release of greenhouse gases into the atmosphere from sources and processes within an offset project boundary.

I.A.41 “Emissions data report” means the report prepared by a covered entity and submitted to the program director that provides information on all emissions the entity emitted or for which it is responsible. The emissions data report is for the submission of required data for the calendar year prior to the year in which the report is due. For example, the 2022 emissions data report would cover emissions for the 2022 calendar year and would be reported in 2023.

I.A.42 “Energy imbalance market” or “EIM” means:

I.A.42.a. the operation of the real-time market managed by the California Independent System Operator (CAISO) or its successor entity to manage transmission congestion and optimize procurement of energy to balance supply and demand in the combined CAISO and CAISO-managed EIM footprint; or

I.A.42.b. the operation of another real-time market to manage transmission congestion and/or optimize procurement of energy to balance supply and demand in a defined footprint, of which market one or more Colorado electric utilities or balancing authorities is a member or participant.

I.A.43 "Energy-intensive, trade-exposed entity" or "EITE entity" means an entity that principally manufactures iron, steel, aluminum, pulp, paper, or cement and that is engaged in the manufacture of goods through one or more emissions-intensive, trade-exposed processes. Entities involved in the following processes, as identified by industry group and code in the North American Industry Classification System, may qualify as EITE entities if the Division, acting as staff to the Commission, determines they are engaged in the manufacture of goods through one or more emissions-intensive, trade-exposed processes: Cement and Concrete Product Manufacturing, code 3273; Foundries, code 3315; Iron and Steel Mills and Ferroalloy Manufacturing, code 3311; Lime and Gypsum Product Manufacturing, code 3274; Pulp, Paper, and Paperboard Mills, code 3221.

I.A.44 "Enforceable" means the authority of the Division to hold a particular party liable and to take appropriate action if any of the provisions of this article are violated.

I.A.45 "Entity" means a person, firm, association, organization, partnership, business trust, corporation, limited liability company, company, or government agency.

I.A.46 "Environmental impact assessment" means a detailed public disclosure statement of potential environmental and socioeconomic impacts associated with a proposed project. Such disclosure is a matter of public record and provides detailed information to public agencies and the general public about the effect that a proposed project is likely to have on the environment and ways in which the significant effects of such a project might be minimized, and indicates alternatives to such a project.

I.A.47 "Environmental stringency" means, for the purposes of this Part C, the ability of the program to deliver the GHG emission reductions contemplated by the program, including the allowance budgets established in this Part C.

I.A.48 "External greenhouse gas emissions trading system" or "external GHG ETS" means an administrative system, other than the program established by this Part C, that controls greenhouse gas emissions from sources in its program.

I.A.49 "Facility," except as otherwise expressly provided, means any physical property, plant, building, structure, source, or stationary equipment located on one or more contiguous or adjacent properties in actual physical contact or separated solely by a public roadway or other public right-of-way and under common ownership or common control, that emits, may emit, or causes or may cause to be emitted any greenhouse gas.

With respect to natural gas processing plants, "facility" means equipment associated with the separation of natural gas liquids (NGLs) or non-methane gases from produced natural gas, including separation of sulfur and carbon dioxide, that processes an annual average throughput of 25 MMscf per day or greater.

I.A.50 "First deliverer of electricity" means the owner or operator of an electricity generating facility in Colorado, or an electricity importer.

I.A.51 "Fossil fuel" means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material for the purpose of creating useful heat.

I.A.52 "Fuel" means solid, liquid, or gaseous combustible material. Volatile organic compounds burned in destruction devices are not fuels unless they can sustain combustion without use of a pilot fuel and such destruction does not result in a commercially useful end product.

I.A.53 "Fuel analytical data" means data collected about fuel usage (including mass, volume, and flow rate) and fuel characteristics (including heating value, carbon content, and molecular weight) to support emissions calculation.

I.A.54 "Fuel importer" has the meaning set forth in Part A of this Regulation 22.

I.A.55 "Fuel supplier" has the meaning set forth in Part A of this Regulation 22.

I.A.56 "General market participant" means any entity that: (1) intends to purchase, hold, sell, or voluntarily retire compliance instruments; (2) is not a covered entity; (3) is not a non-covered entity that is allocated allowances under Section VI.C.; and (4) is approved by the program director.

I.A.57 "Global warming potential" or "GWP" shall have the meaning set forth in Part A of this Regulation 22.

I.A.58 "Greenhouse gas" or "GHG" shall have the meaning set forth in Part A of this Regulation 22, expressed as CO2e.

I.A.59 "Greenhouse gas emission reduction" or "GHG emission reduction" means, in the context of Colorado offset credits, a calculated decrease in GHG emissions relative to a project baseline over a specified period of time.

I.A.60 "Greenhouse gas emission source" or "GHG emission source" means, in the context of Colorado offset credits, any type of emitting activity that releases greenhouse gases into the atmosphere.

I.A.61 "Greenhouse gas removal" or "GHG removal" means the calculated total mass of a GHG removed from the atmosphere over a specified period of time.

I.A.62 "Greenhouse gas removal enhancement" or "GHG removal enhancement" means a calculated increase in GHG removals relative to a project baseline.

I.A.63 "Greenhouse gas reservoir" or "GHG reservoir" means a physical unit or component of the biosphere, geosphere, or hydrosphere with the capability to store accumulate, or release a GHG removed from the atmosphere by a GHG sink or a GHG captured from a GHG emission source.

I.A.64 “Greenhouse gas sink” or “GHG sink” means a physical unit or process that removes a GHG from the atmosphere.

I.A.65 “Holding account” means an account created for an entity to hold compliance instruments.

I.A.66 “Imported electricity” has the meaning set forth in Part A of this Regulation 22.

I.A.67 “Interstate pipeline” means any entity that owns or operates a natural gas pipeline delivering natural gas to consumers in the State of Colorado and is subject to rate regulation by the Federal Energy Regulatory Commission.

I.A.68 “Intrastate pipeline” means any pipeline or piping system wholly within the State of Colorado that is delivering natural gas to end-users and whose owner or operator is not regulated as a natural gas utility by the Public Utilities Commission, whose owner or operator is not a publicly owned natural gas utility, and that is not regulated as an interstate pipeline by the Federal Energy Regulatory Commission. This definition includes natural gas processing plants that deliver pipeline and/or non-pipeline quality natural gas to one or more end users. Facility operators who operate an interconnection pipeline that connects their facility to an interstate pipeline, or that share an interconnection pipeline to an interstate pipeline with other nearby facilities, are not considered intrastate pipeline operators. Facilities that receive gas from an upstream local distribution company and redeliver a portion of the gas to one or more adjacent facilities are not considered intrastate pipelines.

I.A.69 “Limited use holding account” means an account in which allowances allocated to an entity pursuant to Section VI. are placed. Allowances placed in this account can only be removed for sale at the auction pursuant to Section VII.

I.A.70 “Market-shifting leakage,” in the context of an offset project, means increased GHG emissions or decreased GHG removals outside an offset project’s boundary due to the effects of an offset project on an established market for goods or services.

I.A.71 “Metric ton” shall have the meaning set forth in Part A of this Regulation 22.

I.A.72 “Monitoring” means, in the context of offset projects, the ongoing collection and archiving of all relevant and required data for determining the project baseline, project emissions, and quantifying GHG emission reductions or GHG removal enhancements that are attributable to the offset project.

I.A.73 “Natural and working lands” means:

I.A.73.a. Lands and waters:

I.A.73.a.(i) Actively used by an agricultural owner or operator for an agricultural operation that includes, but need not be limited to, active engagement in farming or ranching;

I.A.73.a.(ii) Producing forest products;

I.A.73.a.(iii) Consisting of forests, woodlands, grasslands, sagebrush steppes, deserts, freshwater and riparian systems, wetlands, watersheds, wildlands, or wildlife habitats;

I.A.73.a.(iv) Used for recreational purposes such as parks, urban and community forests, trails, greenbelts and other similar open space land; and

I.A.73.b. Lands and waters described in paragraph (a) that are Indian trust lands or lands within the boundaries of the reservation of an eligible Indian tribe.

I.A.74 "Natural gas" means a naturally occurring mixture or process derivative of hydrocarbon and non-hydrocarbon gases found in geologic formations beneath the earth's surface, of which its constituents include methane, heavier hydrocarbons, and carbon dioxide. Natural gas may be field quality (which varies widely) or pipeline quality. For the purposes of this rule, the definition of natural gas includes similarly constituted fuels such as field production gas, process gas, and fuel gas.

I.A.75 "Natural gas liquids" or "NGLs" means those hydrocarbons in natural gas that are separated from the gas as liquids through the process of absorption, condensation, adsorption, or other methods. Natural gas liquids can be classified according to their vapor pressures as low (condensate), intermediate (natural gasoline), and high (liquefied petroleum gas) vapor pressure. Generally, such liquids consist of ethane, propane, butanes, pentanes and higher molecular weight hydrocarbons. Bulk NGLs refers to mixtures of NGLs that are sold or delivered as undifferentiated product from natural gas processing plants.

I.A.76 "Natural gas processing plant" means any processing site engaged in the extraction of natural gas liquids from field gas, fractionation of mixed natural gas liquids to natural gas products, or both. A Joule-Thompson valve, a dew point depression valve, or an isolated or standalone Joule-Thompson skid is not a natural gas processing plant.

I.A.77 "Natural gas supplier" means: (1) a natural gas utility operating in Colorado; or (2) the operator of an intrastate pipeline not included in (1) above that distributes natural gas directly to end users in Colorado. For the purposes of this Part C, the operator of an interstate pipeline is not a natural gas supplier.

I.A.78 "NERC e-tag" means a North American Electric Reliability Corporation (NERC) energy tag representing transactions on the North American bulk electricity market scheduled to flow between or across balancing authority areas.

I.A.79 "Offset" means Colorado offset credit.

I.A.80 "Offset project" means all equipment, materials, items, or actions that are directly related to or have an impact upon GHG emission reductions, project emissions, or GHG removal enhancements within the offset project boundary.

I.A.81 "Offset project boundary" is defined by and includes all GHG emission sources, GHG sinks or GHG reservoirs that are affected by an offset project and under control of the offset project operator. GHG emission sources, GHG sinks or GHG reservoirs not under control of the offset project operator are not included in the offset project boundary.

I.A.82 "Offset project commencement" means, unless otherwise specified in a compliance offset protocol, the date of the beginning of construction, work, or installation for an offset project involving physical construction, other work at an offset project site, or installation of equipment or materials. For an offset project that involves the implementation of a management activity, "offset project commencement" means, unless otherwise specified in a compliance offset protocol, the date on which such activity is first implemented.

I.A.83 "Offset project data report" means the report prepared by an offset project operator each reporting period that provides the information, documentation, and attestations required by this Part C or a compliance offset protocol. An unattested report is not a valid offset project data report, and therefore will not satisfy any deadlines regarding submittal of an offset project data report.

I.A.84 "Offset project listing" or "listing" means the information, documentation and attestations required by this Part C or a compliance offset protocol that an offset project operator or must submit to the Division or an offset project registry, that has been reviewed for completeness by the Division or the offset project registry and publicly listed by the Division or the offset project registry. An offset project listing must include the attestations required by this Part C in order to be considered complete by the Division or the offset project registry.

I.A.85 "Offset project operator" means the entity(ies) with legal authority to implement the offset project.

I.A.86 "Offset project registry" means a registry maintained by the Division or an entity appointed by the Division to collect offset project data reports, facilitate verification of offset project data reports, and issue Colorado offset credits for offset projects being implemented using a compliance offset protocol.

I.A.87 "Offset protocol" means a documented set of procedures and requirements to quantify ongoing GHG emission reductions or GHG removal enhancements achieved by an offset project and to calculate the project baseline. Offset protocols specify relevant data collection and monitoring procedures and emission factors, conservatively account for uncertainty and activity-shifting leakage and market-shifting leakage risks associated with a type of offset project, determine data verification requirements, and specify procedures for approving Division-accredited verification bodies.

I.A.88 "Operator" means the entity, including an owner, having operational control of a facility, or other entity from which an emissions data report is required.

I.A.89 "Permanent" means, in the context of Colorado offset credits, either that GHG emission reductions and GHG removal enhancements are not reversible or, when GHG emission reductions and GHG removal enhancements may be reversible, that mechanisms are in place to replace any reversed GHG emission reductions and GHG removal enhancements to ensure that all credited reductions endure for at least 100 years.

I.A.90 “Petroleum” means oil removed from the earth and the oil derived from tar sands and/or shale.

I.A.91 “Point of Delivery” or “POD” means the point on an electricity transmission or distribution system where a deliverer makes electricity available to a receiver or available to serve load. This point can be an interconnection with another system or a substation where the transmission provider’s transmission and distribution systems are connected to another system, or a distribution substation where electricity is imported into Colorado over a multi-jurisdictional retail provider’s distribution system.

I.A.92 “Point of Receipt” or “POR” means the point on an electricity transmission or distribution system where an electricity receiver receives electricity from a deliverer. This point can be an interconnection with another system or a substation where the transmission provider’s transmission and distribution systems are connected to another system.

I.A.93 “Power” means electricity, except where the context makes clear that another meaning is intended.

I.A.94 “Primary account representative” means an individual authorized by a registered entity through the registration process set forth in Section III. to make submissions to the program director and the tracking system in all matters pertaining to this Part C that legally bind the authorizing entity.

I.A.95 “Proceeds” means monies generated as a result of an auction.

I.A.96 “Process” means the intentional or unintentional reactions between substances or their transformation, including the chemical or electrolytic reduction of metal ores, the thermal decomposition of substances, and the formation of substances for use as product or feedstock.

I.A.97 “Program” means the Colorado Greenhouse Gas Emission Reduction Program established by this Part C.

I.A.98 “Program director” means the individual appointed by the head of Environmental Programs at the Colorado Department of Public Health and Environment to be responsible for implementation of the Colorado Greenhouse Gas Emission Reduction Program.

I.A.99 “Project baseline” means, in the context of a specific offset project, a conservative estimate of business-as-usual GHG emission reductions or GHG removal enhancements for the offset project’s GHG emission sources, GHG sinks, or GHG reservoirs within the offset project boundary.

I.A.100 “Project emissions” means any GHG emissions associated with the implementation of an offset project that must be accounted for in the offset project data report.

I.A.101 “Public Utilities Commission” means the Colorado Public Utilities Commission created pursuant to Section 40-2-101, C.R.S.

I.A.102 “Publicly owned natural gas utility” means a municipality or municipal corporation, a municipal utility district, or a public utility district that furnishes natural gas services to end users.

I.A.103 “Purchase limit” means the maximum percentage of allowances that may be purchased by an entity or a group of affiliated entities at an allowance auction.

I.A.104 “Quantifiable” means, in the context of offset projects, the ability to accurately measure and calculate GHG emission reductions or GHG removal enhancements relative to a project baseline in a reliable and replicable manner for all GHG emission sources, GHG sinks, or GHG reservoirs included within the offset project boundary, while accounting for uncertainty and activity-shifting leakage and market-shifting leakage.

I.A.105 “Quantitative usage limit” means a limit on the percentage of an entity’s compliance obligation that may be met by surrendering Colorado offset credits.

I.A.106 “Real” means, in the context of offset projects, that GHG emission reductions or GHG enhancements result from a demonstrable action or set of actions, and are quantified using appropriate, accurate, and conservative methodologies that account for all GHG emission sources, GHG sinks, and GHG reservoirs within the offset project boundary and account for uncertainty and the potential for activity-shifting leakage and market-shifting leakage.

I.A.107 “Reporting period” means, in the context of offsets, the period of time for which an offset project operator quantifies and reports GHG emission reductions or GHG removal enhancements covered in an offset project data report. An offset project’s reporting period is established in the project listing documentation, but may be modified by notifying the Division in writing or by providing updated listing information with the submittal of the offset project data report. Modifications to the reporting period are only allowed if the Division is notified prior to any deadlines being missed. The first reporting period for an offset project in an initial crediting period may consist of 6 to 24 consecutive months; all subsequent reporting periods in an initial crediting period and all reporting periods in any renewed crediting period must consist of 12 consecutive months.

I.A.108 “Regulatory compliance” means fulfilling all local, regional, state, and national environmental and health and safety laws and regulations that apply based on the offset project location and that directly apply to the offset project, including as specified in a compliance offset protocol.

I.A.109 “Retirement account” means the account under control of the program director where retired compliance instruments are placed. Compliance instruments registered into this account cannot be removed.

I.A.110 “Reversal” (or a variant thereof) means a GHG emission reduction or GHG removal enhancement, for which a Colorado offset credit has been issued, that is subsequently reversed because some or all of the GHGs accounted for in the GHG emission reduction or GHG removal enhancement are released or emitted back into the atmosphere, or that is later determined to have never occurred. A reversal is either intentional or unintentional.

I.A.111 “Sequestration” means the removal and storage of GHGs from the atmosphere in GHG sinks or GHG reservoirs through physical or biological processes.

I.A.112 "Source" means greenhouse gas source; or any entity, physical unit, process, or other use or activity that releases a greenhouse gas into the atmosphere or causes a greenhouse gas to be released into the atmosphere. "Source" includes an entity that introduces a liquid or gaseous fuel into commerce in Colorado.

I.A.113 "Stationary" means neither portable nor self-propelled, and operated at a single facility.

I.A.114 "Supplier" has the meaning set forth in Part A of this Regulation 22.

I.A.115 "Terminal" has the meaning set forth in Part A of this Regulation 22.

I.A.116 "Tracking system" means a compliance instrument tracking system designated by the program director where compliance instruments are issued, traded, and retired.

I.A.117 "Transaction," when referring to an arrangement between registered entities regarding compliance instruments, means an understanding among registered entities to transfer the control of a compliance instrument from one entity to another, either immediately or at a later date.

I.A.118 "Transfer" of a compliance instrument means the removal of a compliance instrument from one account and placement into another account.

I.A.119 "Transfer request" means the communication by an authorized account representative or an alternate authorized account representative to the accounts administrator to register into the tracking system the transfer of allowances between accounts.

I.A.120 "Tribe" means a federally-recognized Indian tribe and any entity created by a federally-recognized Indian tribe.

I.A.121 "Verifiable" means that an offset project data report assertion is well documented and transparent such that it lends itself to an objective review by an accredited verification body.

I.A.122 "Vintage Year," when referring to allowances, means the year corresponding to the budget in Section V within which the allowance represents one ton of CO2e emissions.

II. Applicability.

II.A. Covered Entities.

II.A.1 This Part C applies to all of the following entities:

II.A.1.a. Facility Operators. Operators of a facility within Colorado that has one or more of the following processes or operations:

II.A.1.a.(i) Cement production;

II.A.1.a.(ii) Cogeneration;

II.A.1.a.(iii) Glass production;

II.A.1.a.(iv) Hydrogen production;

II.A.1.a.(v) Iron and steel production;

II.A.1.a.(vi) Lead production;

II.A.1.a.(vii) Lime manufacturing;

II.A.1.a.(viii) Natural gas processing plant;

II.A.1.a.(ix) Nitric acid production;

II.A.1.a.(x) Petroleum refining;

II.A.1.a.(xi) Pulp and paper manufacturing;

II.A.1.a.(xii) Self-generation of electricity; or

II.A.1.a.(xiii) Stationary combustion.

II.A.1.b. First Deliverers of Electricity.

II.A.1.b.(i) Electricity generating facilities operating in Colorado; or

II.A.1.b.(ii) Entities that import electricity into Colorado.

II.A.1.c. Natural Gas Suppliers.

II.A.1.c.(i) A natural gas utility operating in Colorado; or

II.A.1.c.(ii) The operator of an intrastate pipeline not included in Section II.A.1.c.(i) that distributes natural gas directly to end users in Colorado.

II.A.1.d. Suppliers of RBOB and Distillate Fuel Oil. A position holder of one or more of the following fuels, or as an enterer that imports one or more of the following fuels into Colorado outside the bulk transfer/terminal system:

II.A.1.d.(i) RBOB;

II.A.1.d.(ii) Distillate Fuel Oil No. 1; or

II.A.1.d.(iii) Distillate Fuel Oil No. 2.

II.A.1.e. Suppliers of Liquefied Petroleum Gas.

II.A.1.e.(i) The operator of a refinery that produces liquefied petroleum gas in Colorado;

II.A.1.e.(ii) The operator of a facility that fractionates natural gas liquids to produce liquefied petroleum gas; or

II.A.1.e.(iii) An importer of liquefied petroleum gas into Colorado.

II.A.1.f. Section II.A.1.c., II.A.1.d., and II.A.1.e apply to suppliers of blended fuels that contain the fuels listed above.

II.A.1.g. Suppliers of Liquefied Natural Gas and Compressed Natural Gas.

II.A.1.g.(i) Facilities that make liquefied natural gas products or compressed natural gas products by liquefying or compressing natural gas received from interstate pipelines; and

II.A.1.g.(ii) Importers of liquefied natural gas and compressed natural gas.

II.A.1.h. Carbon dioxide suppliers.

II.B. Inclusion Threshold for Covered Entities.

II.B.1 If an entity's emissions in any calendar year equal or exceed the thresholds for inclusion identified in Section III.B.2., that entity is classified as a covered entity for that year and all future years until the requirements in Section II.B.3. are met.

II.B.2 The requirements apply as follows:

II.B.2.a. Operators of Facilities. The applicability threshold for a facility is 25,000 metric tons or more of CO2e per data year.

II.B.2.b. First Deliverers of Electricity.

II.B.2.b.(i) Electricity Generating Facilities. The applicability threshold for an electricity generating facility is based on the annual emissions resulting from the generation of the electricity. The applicability threshold for an electricity generating facility is 25,000 metric tons or more of CO2e per data year.

II.B.2.b.(ii) Electricity Importers. The threshold for an importer of electricity is zero metric tons of CO2e per data year.

II.B.2.c. Carbon Dioxide Suppliers. The applicability threshold for a carbon dioxide supplier is 25,000 metric tons or more of CO2e per data year. For purposes of comparison to this threshold, the supplier must include the sum of the CO2 that it captures from its production process units to supply CO2 for commercial applications or that it captures from a CO2 stream to utilize for geologic sequestration, and the CO2 that it extracts or produces from a CO2 production well to supply CO2 for commercial applications or that it extracts or produces to utilize for geologic sequestration.

II.B.2.d. Fuel Suppliers and Importers. The threshold for a fuel supplier or fuel importer is a quantity of fuel, of the types identified in Section II.A.1.c. through II.A.1.g., imported to, delivered to, owned in, and/or stored in Colorado by the fuel supplier or fuel importer in a data year such that the full combustion or oxidation of the fuel would create 25,000 metric tons or more of CO2e annually of GHG emissions.

II.B.3 Requirements for Covered Entities to Exit the Program.

II.B.3.a. If the emissions that a covered entity is responsible for in any year fall to zero, that entity will not have a compliance obligation for the emissions from that year, but the covered entity will continue to have a compliance obligation for all emissions it is responsible for in other years during the relevant compliance period where the covered entity's emissions exceeded zero.

II.B.3.b. Once a covered entity's emissions have fallen to zero for each year in a compliance period, that entity is no longer a covered entity; however, if the entity's emissions exceed zero in any future year, the entity will be a covered entity again and subject to all the compliance requirements under this Part C as a covered entity.

III. Registration and Accounts.

III.A. General Provisions.

III.A.1 The program director shall serve as accounts administrator or may contract with an entity to serve as accounts administrator.

III.A.2 An entity qualified to register for accounts cannot apply for more than one limited use holding account, holding account, or compliance account in the tracking system.

III.A.3 An entity cannot hold a compliance instrument until the program director approves the entity's registration and the accounts administrator creates an account for that entity in the tracking system.

III.B. Entities Eligible for Registration.

III.B.1 An entity may register in the tracking system as a covered entity, as a non-covered entity that is allocated allowances under Section VI.B.3., or as a general market participant.

III.B.2 Entities Eligible for Initial Registration in a Consolidated Account.

III.B.2.a. If a group of unregistered entities that qualify for registration are members of a direct corporate association, then they may choose to register for a consolidated account on behalf of some or all of the group members.

III.B.2.b. If one entity has control over any of the entities in a group of entities applying for a consolidated account, then the registration process must be initiated and completed by the entity that has control.

III.C. Requirements for Registration. Registration is complete when the program director approves the registration and the accounts administrator informs the entity of the approval.

III.C.1 An entity must complete an application to register with the Division for an account in the tracking system. Applicants must provide the following information:

III.C.1.a. Name, physical and mailing addresses, contact information, entity type, date and place of incorporation, and ID number assigned by the incorporating agency;

III.C.1.b. Names and addresses of the entity's directors and officers with authority to make legally binding decisions on behalf of the entity, and partners with over 10 percent of control over the partnership, including any individual or entity doing business as the limited partner or general partner;

III.C.1.c. Names and contact information for persons controlling over 10 percent of the voting rights attached to all the outstanding voting securities of the entity;

III.C.1.d. A business number, if one has been assigned to the entity by a Colorado state agency;

III.C.1.e. A government-issued taxpayer or Employer Identification Number or, for entities located in the United States, a U.S. Federal Tax Employer Identification Number, if assigned;

III.C.1.f. Identification of the qualifications for registration;

III.C.1.g. Disclosure of all other entities with whom the entity has a direct corporate association or indirect corporate association that must or may be involved with the Colorado program, and a brief description of the association;

III.C.1.h. An applicant that is a member of a direct corporate association may apply for a consolidated entity account to include other associated registered entities within the direct corporate association. To do so, the applicant must identify each associated registered entity that will be assigned to its account, and each associated registered entity must provide an attestation signed by its officer or director to confirm that it seeks to be added to the consolidated entity account. The applicant must be able to demonstrate that it has the controlling ownership or authority to act on behalf of all members of the direct corporate association. The applicant cannot be an entity that is a subsidiary to or controlled by another associated entity within the direct corporate association;

III.C.1.i. An applicant that is a member of a direct corporate association and seeks to apply for its own separate entity account, rather than apply for a consolidated entity account, must provide an allocation of the purchase limits among the separate accounts established for any of its corporate associates. All members of a direct corporate association must separately confirm the allocation of holding and purchase limits; and

III.C.1.j. Names and contact information for all employees of the entity with knowledge of the entity's market position (current and/or expected holdings of compliance instruments and current and/or expected covered emissions).

III.C.2 To create a consolidated account for entities that are members of a direct corporate association that accept assignment to a consolidated entity account, the program director shall instruct the accounts administrator to create a single consolidated entity account in the tracking system that includes the following:

III.C.2.a. A holding account;

III.C.2.b. A compliance account only for a consolidated entity account with at least one member entity that is eligible for a compliance account; and

III.C.2.c. A limited use holding account only for a consolidated entity account with at least one member entity that is eligible for a limited use holding account.

III.C.3 An entity must designate a primary account representative and at least one, and up to four, alternate account representative.

III.C.4 Any individual who requires access to the tracking system, including a prospective primary account representative, prospective alternate account representative, or prospective account viewing agent for a registered entity, must first register as a user in the tracking system.

III.C.4.a. An individual qualified to register as a user in the tracking system cannot apply for more than one user registration.

III.C.4.b. An individual cannot be designated in a capacity requiring access to the tracking system until the program director approves the user's registration in the tracking system. This prohibition includes all primary account representatives, alternate account representative, and account viewing agents.

III.C.5 An entity or individual applicant may be denied registration:

III.C.5.a. Based on the information provided;

III.C.5.b. If the program director determines the applicant has provided false or misleading information;

III.C.5.c. If the program director determines the applicant has withheld information material to the registration; or

III.C.5.d. If an individual is already registered and has a user account under the same or a different name.

III.D. Registration Deadlines.

III.D.1 An entity that meets the inclusion threshold of Section II. for covered entities must complete registration within 30 calendar days of the relevant reporting deadline or date set forth in Part A of this Regulation 22 when it first reports emissions that meet or exceed the inclusion threshold.

III.D.2 If a party intends to participate in an auction that is either (i) a covered entity that is not yet required to report pursuant to Part A of this Regulation or (ii) not a covered entity, the entity must complete registration no later than 90 days prior to the auction date

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III.E. Updating Registration Information.

III.E.1 When there is a change to the information a registrant has submitted, the registrant must update the registration information within 30 calendar days of the change.

III.E.2 An entity that fails to update registration information by the applicable deadline may be subject to the restriction or revocation of its tracking system accounts.

III.F. Information submitted pursuant to Sections III.C.1.b., III.C.1.c., and III.C.1.j. about individuals received during the registration process will be treated as confidential by the program director and the accounts administrator to the extent permitted by law and as feasible, except as needed in the course of oversight, investigation, enforcement and prosecution:

IV. Compliance Requirements for Covered Entities.

IV.A. A covered entity has an annual compliance obligation and a compliance obligation for each compliance period.

IV.B. A covered entity must report its emissions and the emissions it is responsible for in an emissions data report each year. A fuel supplier or fuel importer is responsible for the emissions that would result from the complete combustion or oxidation of all fuel that it delivers for use in Colorado during the compliance period less the fuel that it delivers to other covered entities. A facility's CO2e emissions are determined by summing all the CO2e emissions that facility is responsible for.

IV.C. Surrendering Compliance Instruments.

IV.C.1 Annual Compliance Obligation. In 2024, 2025, 2030, and 2050, an entity must surrender compliance instruments equal to 100 percent of its emissions and emissions it is responsible for by placing sufficient compliance instruments in the entity's compliance account. In all other years, a covered entity must surrender compliance instruments equal to at least 30 percent of its emissions and emissions it is responsible for during each calendar year by placing sufficient compliance instruments in the entity's compliance account. Allowances surrendered to meet a covered entity's annual compliance obligation shall also be used to meet the portion of the entity's compliance period obligation equivalent to the surrendered compliance instruments.

IV.C.2 Compliance Period Obligation. A covered entity must surrender one compliance instrument for each metric ton of CO2e that the covered entity emits or for which the covered entity is responsible during each compliance period by placing sufficient compliance instruments in the entity's compliance account.

IV.C.3 The primary account representative or the alternate account representative must notify the accounts administrator which compliance instruments a covered entity is surrendering to meet the covered entity's compliance obligations.

IV.C.4 The deadline for surrender of compliance instruments to meet a covered entity's compliance obligation is November 1 of the calendar year following the applicable annual compliance obligation year or the end of the compliance period.

IV.D. To fulfill a compliance obligation, an allowance must be of a vintage year within or before the time period covered by the compliance obligation and an offset must be issued within or before the time period covered by the compliance obligation.

IV.E. Compliance instruments placed into a covered entity's compliance account cannot be removed from that account, except when placed into the retirement account. After the end of each compliance period, the program director will retire allowances in each compliance account equivalent to the emissions from that entity during that compliance period by placing the retired allowances into the retirement account.

IV.F. In addition to the other requirements of Section IV., a facility for which a covered entity has not received allowances under Section VI.A.1. or Section VI.A.4. and that the Division determines meets the criteria established below must reduce its GHG emissions during the current year, relative to its baseline emissions, by an amount that is proportionate to the decline of the total annual allowance budget for the state from the prior year to the current , and the facility must not exceed that level of emissions in any subsequent year. These requirements apply to a facility if the Division determines that the facility, at any point in the prior year:

IV.F.1 Failed to satisfy any applicable requirement, other than an administrative requirement, established by, or promulgated under, Title 25, Article 7, C.R.S.; and

IV.F.2 Emitted an air pollutant other than GHGs that adversely affected a disproportionately impacted community through localized harmful air pollution.

The requirements of this Section IV.F also apply to a facility if the Division determines that the facility, during the prior year, contributed to unacceptable adverse cumulative air pollution impacts on any disproportionately impacted community.

The Division will make all determinations included in this Section IV.F. before the first auction of each year.

IV.G. A covered entity is prohibited from using Colorado offsets credits to meet any part of its annual compliance obligation or compliance period obligation if it operates a facility that the Division determines:

IV.G.1 At any point in the year or compliance period for which it is surrendering allowances failed to satisfy any applicable requirement, other than an administrative requirement, established by, or promulgated under, Title 25, Article 7, C.R.S.; or

IV.G.2 At any point in the year or compliance period for which it is surrendering allowances emitted an air pollutant other than GHGs that adversely affected a disproportionately impacted community through localized harmful air pollution.

The Division will make all determinations included in this Section IV.G. before the first auction of each year.

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IV.H. The use of Colorado offset credits to meet an entity's compliance obligation is subject to the following quantitative usage limits:

IV.H.1 For the first compliance period, no more than 4 percent of an entity's compliance obligation.

IV.H.2 For the second compliance period, no more than 4 percent of an entity's compliance obligation for 2024 and 2025 and no more than 6 percent of any entity's compliance obligation for 2026.

IV.H.3 For the third and subsequent compliance periods, no more than 6 percent of an entity's compliance obligation.

IV.I. Compliance Periods.

IV.I.1 The first compliance period starts on January 1, 2022 and ends on December 31, 2023.

IV.I.2 The second compliance period starts on January 1, 2024 and ends on December 31, 2026.

IV.I.3 Each subsequent compliance period begins on January 1st of the year following the conclusion of the previous period on December 31st and has a duration of three calendar years.

V. Annual Allowance Budgets

V.A. The annual allowance budget for years 2022 through 2050 and thereafter are as follows:

V.A.1 2022: 66.5 million allowances;

V.A.2 2023: 63.5 million allowances;

V.A.3 2024: 60.6 million allowances;

V.A.4 2025: 57.5 million allowances;

V.A.5 2026: 51.7 million allowances;

V.A.6 2027: 46.1 million allowances;

V.A.7 2028: 40.7 million allowances;

V.A.8 2029: 35.3 million allowances; and

V.A.9 2030: 29.7 million allowances.

V.B. Budget for Years 2031 Through 2050 and Thereafter.

V.B.1 No later than 2029, the commission shall set the budgets for years 2031 through 2040 based on updated data and projections to ensure reductions consistent with the goals and objectives in Section 25-7-102(2)(g), C.R.S., are achieved.

V.B.2 No later than 2039, the commission shall set the budgets for years 2041 through 2050 based on updated data and projections to ensure reductions consistent with the goals and objectives in Section 25-7-102(2)(g), C.R.S., are achieved.

V.B.3 No later than 2049, the commission shall set the budgets for years 2051 through any remaining years of the program, as appropriate, based on updated data and projections to ensure reductions consistent with the goals and objectives in Section 25-7-102(2)(g), C.R.S., are achieved. These budgets set under this Section V.B.3 may be revised and updated, as appropriate based on updated data and projections, to ensure reductions consistent with the goals and objectives in Section 25-7-102(2)(g), C.R.S., are achieved.

VI. Allowance Allocation.

VI.A. The program director shall allocate allowances to covered entities as follows:

VI.A.1 Allowance Allocation to Colorado Retail Electricity Sellers with Clean Energy Plans.

VI.A.1.a. Allowances will only be allocated to Colorado retail electricity sellers that have filed clean energy plans with the Public Utilities Commission for years covered by the clean energy plans that meet the following conditions:

VI.A.1.a.(i) The clean energy plan as filed must require at least an eighty percent reduction in greenhouse gas emissions caused by that retail electricity seller's Colorado retail electricity sales by 2030 relative to 2005 levels;

VI.A.1.a.(ii) The clean energy plan as implemented must achieve the reductions in the clean energy plan and those reductions must result in at least a 75 percent reduction in greenhouse gas emissions caused by the utility's Colorado retail electricity sales by 2030 relative to 2005 levels; and

VI.A.1.a.(iii) The clean energy plan must meet all applicable additional requirements established by the Division or the Public Utilities Commission.

VI.A.1.b. Each year covered by a clean energy plan, a Colorado retail electricity seller that meets the criteria of Section VI.A.1.a. will be allocated allowances for the quantities of greenhouse gas emissions that would result from the generation of electricity for its retail sales under its clean energy plan for that year, as determined by the Public Utilities Commission and verified by the Division.

VI.A.1.c. A Colorado retail electricity seller allocated allowances pursuant to Section VI.A.1.b. may apply to the program director for additional allowances, which must be used to offset costs, if any, of implementing the retail electricity seller's clean energy plans affecting their low-income residential sales customers. The program director shall determine the number of allowances allocated based on the retail electricity seller's demonstration, as verified by the Public Utilities Commission, of any impacts of their clean energy plan investments on low-income residential sales customers that cannot be defrayed under the allocation under Section VI.A.1.b. and how these additional allowances will be used to help mitigate those impacts.

VI.A.1.d. Beginning in 2031 and for each following year until and including 2050, the direct distribution to a retail electricity seller allocated allowances pursuant to Section VI.A.1.b. shall decline annually from the number of allowances distributed to the retail electricity seller in 2030 by a constant amount proportional to the decline of the annual budget as determined by the Division.

VI.A.1.e. A quarter of the yearly allowances allocated to a Colorado retail electricity seller pursuant to Section VI.A.1.b. shall be placed in the Colorado retail electricity seller's limited use holding account every quarter, at least 61 days prior to the date of the auction occurring in that quarter, and consigned to the auction at the next available auction.

VI.A.2 Allowance Allocation to Colorado Retail Electricity Sellers Without Clean Energy Plans.

VI.A.2.a. Each year, a Colorado retail electricity seller that has not filed a clean energy plan that meets the requirements of Section VI.A.1.a. will be allocated allowances equal to the sum of the projected compliance period obligation attributable to the generation of electricity for the retail electricity seller's low-income residential sales customers for that year.

VI.A.2.b. A quarter of the yearly allowances allocated pursuant to Section VI.A.2.a. to a Colorado retail electricity seller that has not filed a clean energy plan that meets the requirements of Section VI.A.1.a. shall be placed in the Colorado retail electricity seller's limited use holding account every quarter, at least 61 days prior to the date of the auction occurring in that quarter, and consigned for sale in the next auction.

VI.A.2.c. If the compliance obligation of a Colorado retail electricity seller that has not filed a clean energy plan that meets the requirements of Section VI.A.1.a. is lower than the projected obligation used to calculate the number of allowances allocated to that Colorado retail electricity seller, the Colorado retail electricity seller must return allowances equal to the difference between the allowances the Colorado retail electricity seller was allocated for that year and the number of allowances they would have been allocated if their actual compliance obligation was used to calculate their allowance allocation in Section VI.A.2.a. Returned allowances shall be placed in the cost-control account.

VI.A.2.d. If the compliance obligation of a Colorado retail electricity seller that has not filed a clean energy plan that meets the requirements of Section VI.A.1.a. is higher than the projected compliance obligation used to calculate the number of allowances allocated to that Colorado retail electricity seller, the Colorado retail electricity seller will be allocated additional allowances in the earliest annual allocation process after the necessary emissions data are reported equal to the difference between the allowances the Colorado retail electricity seller was allocated for that year and the number of allowances they would have been allocated if their actual compliance obligation was used to calculate their allowance allocation in Section VI.A.2.a.

VI.A.2.e. Any additional allowances allocated based on the calculation in Section VI.A.2.d. to a Colorado retail electricity seller that has not filed a clean energy plan that meets the requirements of Section VI.A.1.a. shall be placed in the limited use holding account of the Colorado retail electricity seller without a clean energy plan and consigned for sale in the next auction.

VI.A.2.f. Any proceeds from the sale of allowances allocated under Section VI.A.2 must be used for the benefit of the retail electricity seller's low-income residential sales customers. A Colorado retail electricity seller that does not use the proceeds to benefit their low-income residential sales customers, as determined by the program director, shall not receive future allowance allocations.

VI.A.3 Allowance Allocation to Natural Gas Utilities for the Benefit of Low-Income Customers.

VI.A.3.a. Each year, natural gas utilities will be allocated allowances equal to the sum of the projected compliance period obligation attributable to the provision of natural gas service to the natural gas utility's low-income residential sales customers for that year.

VI.A.3.b. A quarter of the yearly allowances allocated to a Colorado natural gas utility based on Section VI.A.3.a. shall be placed in the Colorado natural gas utility's limited use holding account every quarter, at least 61 days prior to the date of the auction occurring in that quarter, and consigned for sale in the next auction.

VI.A.3.c. If a natural gas utility's compliance obligation is lower than the projected obligation used to calculate the number of allowances allocated to that natural gas utility, the natural gas utility must return allowances equal to the difference between the allowances the natural gas utility was allocated for that year and the number of allowances they would have been allocated if their actual compliance obligation was used to calculate their allowance allocation in Section VI.A.3.a. Returned allowances shall be placed in the cost-control account.

VI.A.3.d. If a natural gas utility's compliance obligation is higher than the projected compliance obligation used to calculate the number of allowances allocated to that natural gas utility, the natural gas utility will be allocated additional allowances in the earliest annual allocation process after the necessary emissions data are reported equal to the difference between the allowances the natural gas utility was allocated for that year and the number of allowances they would have been allocated if their actual compliance obligation was used to calculate their allowance allocation in Section VI.A.3.a.

VI.A.3.e. Any additional allowances allocated to a natural gas utility based on the calculation in Section VI.A.3.d. shall be placed in the natural gas utility's limited use holding account and consigned for sale in the next auction.

VI.A.3.f. Any proceeds from the sale of allowances allocated under Section VI.A.3. must be used for the benefit of the natural gas utilities' low-income residential sales customers. A natural gas utility that does not use the proceeds to benefit their low-income residential sales customers, as determined by the program director, shall not receive future allowance allocations.

VI.A.4 Allowance Allocation to EITE Entities.

VI.A.4.a. Allowances will only be allocated to EITE entities that have met the following conditions:

VI.A.4.a.(i) The EITE entity must execute energy efficiency and emission control audits no less frequently than every five years to determine the best available emission control technologies for GHG emissions and the best available energy efficiency practices at each of its facilities that would qualify it as an EITE entity; and

VI.A.4.a.(ii) The audits must be conducted by a qualified third party, as determined by the Division; and

VI.A.4.a.(iii) An audit must find that the EITE entity currently employs the best available emission control technologies for GHG emissions and best available energy efficiency practices at each of the facilities that would qualify it as an EITE entity; or

VI.A.4.a.(iv) The EITE entity must install and operate the emission control technologies and energy efficiency practices identified as "best" by the audit if not already employed at the facility.

VI.A.4.b. If an EITE entity meets the criteria of Section VI.A.4.a. during the entirety of a compliance period, as documented by audit results and attestation that each facility has installed and operated the best available emission control technologies and best available energy efficiency practices for the entirety of the compliance period, during that compliance period that entity will be allocated allowances equal to 95 percent of the GHG emissions from any and all of its facilities that would qualify it as an EITE entity and the emissions from which are not greater than the emissions associated with the use of the best available emission control technologies and best available energy efficiency practices.

VI.A.4.c. If an EITE entity meets the criteria of Section VI.A.4.a. for only part of a compliance period, as documented by audit results and attestation that each facility has installed and operated the best available emission control technologies and best available energy efficiency practices for the specified portion of the compliance period, that entity will be allocated allowances equal to 95 percent of the GHG emissions from any and all of its facilities that would qualify it as an EITE entity and the emissions from which are not greater than the emissions associated with the use of the best available emission control technologies and best available energy efficiency practices during the portion of the compliance period for which they met the criteria with respect to each such facility.

VI.A.4.d. If an entity should receive allowances under Section VI.A.4.b. or Section VI.A.4.c, the number of allowances allocated to an EITE entity each year will be calculated to cover 95 percent of the EITE entity's emissions based on projected output as if that output were produced while using the best available emission control technologies and best available energy efficiency practices. Projected output is the EITE entity's actual output from the prior year.

VI.A.4.e. A quarter of the yearly allowances allocated to an EITE entity based on Section VI.A.4.d. shall be placed in the EITE entity's limited use holding account every quarter, at least 61 days prior to the date of the auction occurring in that quarter, and consigned to auction at the next available auction.

VI.A.4.f. If an EITE entity's actual output is lower than the projected output used to calculate the number of allowances allocated to that EITE entity, the EITE entity must return allowances equal to the difference between the allowances the EITE entity was allocated for that year and the number of allowances they would need to cover 95% of its emissions from their actual output as if that output were produced while using the best available emission control technologies and best available energy efficiency practices. Returned allowances shall be placed in the cost-control account.

VI.A.4.g. If an EITE entity's actual output is higher than the projected output used to calculate the number of allowances allocated to that EITE entity, the EITE entity will be allocated additional allowances of the appropriate vintage year from the cost-control account equal to the difference between the allowances the EITE entity was allocated for that year and the number of allowances they would need to cover 95% of its emissions from their actual output as if that output were produced while using the best available emission control technologies and best available energy efficiency practices. If there are insufficient allowances in the cost control account of the appropriate vintage year for the additional allocation in this Section VI.A.4.g., the program director shall allocate the available allowances of the appropriate vintage year from the cost-control account to each EITE entity according to its share of the additional allocation in this Section VI.A.4.g., if any, and also additional allowances to the EITE entity during the next annual allocation process in an amount determined by the program director to make up for any shortfall of allowances from the appropriate vintage year. The program director shall continue to allocate additional allowances in each successive annual allocation process until the EITE entity has been compensated, through the sale of additional allowances, for their reasonably incurred costs in obtaining allowances of the appropriate vintage year to cover 95% of their emissions from their actual output as if that output were produced while using the best available emission control technologies and best available energy efficiency practices.

VI.A.4.h. Any additional allowances allocated to an EITE entity based on the calculation in Section VI.A.4.g. shall be placed in the EITE entity's limited use holding account and consigned for sale in the next auction.

VI.A.4.i. Beginning in 2036 and for each following year until and including 2050, the direct distribution to an EITE entity shall decline annually from the average number of allowances annually distributed to the EITE entity over 2033, 2034, and 2035 by a constant amount proportional to the decline of the annual budget.

VI.B. Allowances shall be allocated to the cost-control account as follows:

VI.B.1 Ten percent of the allowance budget each year shall be allocated to the cost-control account.

VI.B.1.a. Proceeds from the sale of any allowances allocated to the cost-control account pursuant to Section VI.B.1. shall be divided proportionately among the entities selling allowances in the auction from their limited use holding accounts that were allocated allowances pursuant to Section VI.A.1., if such entities and the use of such revenue are subject to regulation by the Public Utilities Commission, or Section VI.B.3. The proportion of the proceeds each entity shall receive is calculated as the proportion of allowances such entity sold in the auction from their limited use holding account divided by the total number of allowances sold from the limited use holding accounts of entities eligible to receive proceeds under Section VI.B.1.a.

VI.B.2 Any allowances from limited use holding accounts that were not allocated pursuant to Section VI.A.1 or VI.A.2 and remain unsold after 24 months shall also be added to the cost-control account.

VI.B.2.a. If available, allowances allocated to the cost-control account pursuant to Section VI.B.2. shall be sold first when cost-control account allowances are sold, in the order they were added to the cost-control account.

VI.B.2.b. Proceeds from the sale of any allowances allocated to the cost-control account pursuant to Section VI.B.2. shall be directed to the entity that originally held the allowance in its limited use holding account. If the entity that originally held the allowance in its limited use holding account cannot receive the proceeds, the proceeds shall be divided among entities allocated allowances pursuant to Section VI.B.3. proportionately with the number of allowances those entities sold in the auction.

VI.B.3 If allowances are removed from the cost-control account due to the allocation in VI.A.4.g., additional allowances equal in number to the allowances removed shall be allocated to the cost-control account in the earliest annual allocation process after the removal.

VI.C. The program director, with the guidance of the Colorado Climate Board, shall allocate allowances to non-covered entities as follows:

VI.C.1 Number of Allowances Allocated to Non-covered Entities.

VI.C.1.a. The number of allowances allocated under Section VI.C. shall be all the allowances remaining in the annual allowance budget after the allocations in Sections VI.A. and VI.B.

VI.C.1.b. If any allowances to be allocated under Section VI.C. are unable to be allocated as described in Section VI.C.4., the unallocated allowances shall be allocated among the remaining categories of projects in Section VI.C.4. in proportion to each remaining category's share of allowances as described in Section VI.C.4.

VI.C.1.c. Allowances shall be placed in the project's limited use holding account on a schedule determined by the program director and consigned for sale in the next auction, following the period for appeals pursuant to Section XIII.B.

VI.C.2 The program director, with the guidance of the Colorado Climate Board, shall select which projects to allocate allowances to and how many allowances to allocate to each project, consistent with the requirements of Section VI.C.4.

VI.C.2.a. The Program director shall provide an allocation to a project or projects that provide for the comprehensive monitoring of stationary sources of non-GHG pollutants that adversely affect disproportionately impacted communities through localized harmful air pollution.

VI.C.3 The program director, with the guidance of the Colorado Climate Board, shall consider the following factors when deciding which projects to allocate allowances to and how many allowances to allocate under Section VI.B.3:

VI.C.3.a. How the project will further the state's ability to reach its GHG emission reduction targets;

VI.C.3.b. If the project will protect Coloradans by mitigating the harmful effects of GHG emissions;

VI.C.3.c. If the project will benefit disproportionately impacted communities, including by reducing harmful air pollution in those communities or deploying clean technologies in those communities;

VI.C.3.d. If the project will affect air quality, including air pollution other than GHG emissions;

VI.C.3.e. If the project will benefit communities impacted by the economic transition away from fossil fuels, including by addressing resulting wage differentials, or provide worker re-training for workers affected by the economic transition away from fossil fuels;

VI.C.3.f. If the project will promote low carbon economic development opportunities and the creation of jobs that pay living wages, provide workers health insurance, invest in worker retirement plans, ensure safe workplaces, and invest in worker training;

VI.C.3.g. If the project will provide opportunities for businesses that are owned by members of disproportionately impacted and transitioning communities and eligible Indian tribes to participate in and benefit from statewide efforts to reduce GHG emissions;

VI.C.3.h. If the project will be executed under a project-labor agreement, community benefit agreement, or with best value contracting;

VI.C.3.i. If the project will enhance the reliability of electric service;

VI.C.3.j. If the project will enhance the resilience of Colorado's communities and natural resources to climate impacts; and

VI.C.3.k. How the project has demonstrated that it will achieve the project's proposed benefits.

VI.C.4 Allowance Allocation Project Categories.

VI.C.4.a. Allowance Allocation to Transportation Decarbonization Projects.

VI.C.4.a.(i) A total of 30 percent of the allowances allocated under Section VI.B.3. each year shall be allocated to transportation decarbonization projects.

VI.C.4.a.(ii) Transportation projects that improve mobility and deploy clean transportation options in disproportionately impacted communities shall be prioritized.

VI.C.4.a.(iii) Transportation projects that utilize best value contracting shall be prioritized.

VI.C.4.a.(iv) Types of projects that may receive allocations include, but are not limited to, projects that:

VI.C.4.a.(iv)(A) Repower, retrofit, or replace diesel engines;

VI.C.4.a.(iv)(B) Reduce vehicle miles traveled through bike, pedestrian or other multimodal improvements and traffic signal optimization;

VI.C.4.a.(iv)(C) Increase the resilience of transportation infrastructure and evacuation routes against the effects of climate change, extreme precipitation, extreme temperatures, and wildfire; or

VI.C.4.a.(iv)(D) Reduce vehicle miles traveled by developing or improving efficient passenger or freight rail systems and infrastructure.

VI.C.4.b. Allowance Allocation for Eligible Indian Tribes.

VI.C.4.b.(i) A total of 10 percent of the allowances allocated under Section VI.B.3. each year shall be allocated to eligible Indian tribes for climate mitigation or adaptation projects located in the state of Colorado.

VI.C.4.b.(ii) The allocation under this Section VI.C.4.b. shall in no way preclude or limit allocations under other Section VI.C.4. categories to projects that are located on or benefit eligible Indian tribes.

VI.C.4.c. Allowance Allocation to Natural and Working Lands Projects.

VI.C.4.c.(i) A total of 15 percent of the allowances allocated under Section VI.B.3. each year shall be allocated to natural and working lands projects.

VI.C.4.c.(ii) Types of projects that may receive allocations include, but are not limited to, projects that:

VI.C.4.c.(ii)(A) Achieve energy efficiency improvements or emissions reductions in the agricultural sector including through fertilizer management, soil management, and use of bioenergy or biofuels to displace fossil fuel use;

VI.C.4.c.(ii)(B) Result in sequestration of carbon in forests, agricultural soils, and other terrestrial and aquatic areas;

VI.C.4.c.(ii)(C) Improve the health and resilience of natural and working lands to climate change impacts through actions including thinning, prescribed fire, and wildland fire prevention;

VI.C.4.c.(ii)(D) Reduce the storm water impacts of existing infrastructure and development;

VI.C.4.c.(ii)(E) Reduce the risk of flooding by restoring natural floodplain ecological functions, protecting against damage caused by floods and protecting or restoring naturally functioning areas where floods occur; or

VI.C.4.c.(ii)(F) Increase the ability of natural and working lands to adapt to and remediate the impacts of climate change.

VI.C.4.d. Allowance Allocation for Disproportionately Impacted Communities.

VI.C.4.d.(i) A total of 30 percent of the allowances allocated under Section VI.B.3. each year shall be allocated to projects benefiting disproportionately impacted communities.

VI.C.4.d.(ii) Types of projects that may receive allocations include, but are not limited to, projects that:

VI.C.4.d.(ii)(A) Monitor pollution sources and pollution levels in disproportionately impacted communities;

VI.C.4.d.(ii)(B) Accelerate the deployment of clean technologies, including clean electricity and transportation options, in disproportionately impacted communities;

VI.C.4.d.(ii)(C) Directly reduce GHGs and other pollutants in disproportionately impacted communities; or

VI.C.4.d.(ii)(D) Facilitate the reduction of the disproportionality that increases exposure to environmental harms and risks. Such projects can address negative, or lack of positive, environmental, health, economic, or social conditions that act cumulatively to affect the health of these communities.

VI.C.4.d.(iii) The program director shall prioritize projects that benefit disproportionately impacted communities affected by a facility subject to any of the requirements of section IV.F.

VI.C.4.d.(iv) The allocation under this Section VI.C.4.d. shall in no way preclude or limit allocations under other Section VI.C.4. categories to projects that benefit disproportionately impacted communities.

VI.C.4.e. Allowance Allocation for Just Transition Assistance.

VI.C.4.e.(i) A total of 10 percent of the allowances allocated under Section VI.B.3. each year shall be allocated to projects that assist with a just transition away from fossil fuels.

VI.C.4.e.(ii) The program director shall allocate allowances for just transition assistance to projects selected by the Director of the Just Transition Office, created under Section 8-83-503, C.R.S., that further one or more of the criteria established under Section VI.B.3.3.(a) – (k).

VI.C.4.e.(iii) The allocation under this Section VI.B.3.4.e shall in no way preclude or limit allocations under other Section VI.B.3.4. categories to projects that assist with a just transition away from fossil fuels.

VI.C.4.f. Allowance Allocation for Development of Emission Control Technologies at EITE entities.

VI.C.4.f.(i) A total of 5 percent of the allowances allocated under Section VI.C. each year shall be allocated to projects that assist with the research and development of new or improved greenhouse gas emission control technology or techniques at EITE entities.

VI.C.4.f.(ii) The program director shall prioritize projects that, if successful, would benefit disproportionately impacted communities affected by harmful emissions from EITE entities.

VI.D. Allowances allocated under this section VI other than those allocated to the cost-control account shall be placed in the limited use holding account of each entity and must be consigned for sale at auction pursuant to Section VII before they can be used for compliance.

VII. Allowance Auction.

VII.A. Administration of the Auctions.

VII.A.1 The program director may serve as auction administrator or designate or contract with an entity to serve as auction administrator.

VII.A.2 The program director may serve as financial services administrator or may designate a qualified financial services administrator to conduct all financial transactions required by this Part C.

VII.B. Auction Timing and Notification. Auctions shall occur once every quarter of each calendar year on a date determined by the program director with the first auction taking place in the first quarter of 2022. Auctions shall include a separate bidding process for allowances of each vintage year for which allowances are to be offered. At least 60 days prior to each auction, the auction administrator shall publish the following information:

VII.B.1 The date and time of the auction;

VII.B.2 Auction application requirements and instructions;

VII.B.3 The form and manner for submitting bids;

VII.B.4 The procedures for conducting the auction;

VII.B.5 The administrative requirements for participation;

VII.B.6 The number of allowances that will be available at the auction and their vintage year; and

VII.B.7 For the announcement of the first quarter auction, the minimum number of allowances to be available for sale during the calendar year and the auction reserve price in effect for the calendar year.

VII.C. Auction Eligibility.

VII.C.1 The program director must approve an entity's auction eligibility before that entity may participate in an auction.

VII.C.2 Only an entity registered into the program pursuant to Section III. is eligible for auction participation.

VII.C.3 An entity whose holding account has been revoked or is currently suspended is not eligible to participate in an auction.

VII.D. Auction Participation Approval. An entity that intends to participate in an auction must inform the auction administrator at least 30 days prior to an auction of its intent to bid in an auction, otherwise the entity may not participate in that auction.

VII.E. Protection of Confidential Information. To the extent permitted by state law and to the extent feasible, the program director, the auction administrator, and the financial services administrator will treat the auction eligibility information as confidential business information.

VII.F. All bids will be considered binding offers for the purchase of allowances under the rules of the auction.

VII.G. Auction participants must provide a bid guarantee to the financial services administrator at least 12 days prior to the auction.

VII.G.1 The bid guarantee must be in one, or a combination, of the following forms:

VII.G.1.a. Cash in the form of a wire transfer;

VII.G.1.b. An irrevocable letter of credit; or

VII.G.1.c. A bond.

VII.G.2 All forms of guarantee must be in a form that may be accepted by the financial services administrator consistent with U.S. banking laws and bank practices.

VII.G.3 The bid guarantee must be in U.S. dollars.

VII.G.4 A bid guarantee submitted in any form other than cash must be payable within 3 business days of payment request submitted by physical presentment or electronically by facsimile, or other electronic form accepted by the financial services administrator.

VII.G.5 The amount of the bid guarantee must be greater than or equal to the maximum value of the bids to be submitted.

VII.G.5.a. The value of a set of bids equals the cumulative quantity of bids submitted at or above a price times that price. The value of the set of bids is calculated at each price at which the bidder will submit a bid.

VII.G.6 The bid guarantee will be made payable to the financial services administrator.

VII.G.7 The bid guarantee will expire no sooner than 26 days after the auction date.

VII.G.8 The financial services administrator will evaluate the bid guarantee and inform the auction administrator of the value of the bid guarantee once the form of the bid guarantee is found to conform to this section and is accepted by the program director.

VII.G.9 If an entity has submitted more than one form of bid guarantee, then the financial services administrator will apply the instruments to the unpaid balance in the order the instruments are listed in Section VII.G.1.

VII.H. Auction Bidding Format.

VII.H.1 The auction for allowances of each vintage year will consist of a single round of bidding.

VII.H.2 Bids will be sealed.

VII.H.3 Bid quantities must be submitted as multiples of 1,000 Colorado CO2e allowances.

VII.H.4 Bids must be submitted in U.S. dollars and whole cents.

VII.H.5 Bids must specify the vintage year of the allowances they are made for.

VII.I. Allowances in Each Auction.

VII.I.1 The following allowances will be offered for sale at each auction:

VII.I.1.a. All allowances in limited use holding account are automatically consigned to auction; and

VII.I.1.b. If the settlement price for the auction of allowances from the current vintage year would be above the cost containment price, allowances in the cost-control account shall be offered for sale in the auction of allowances from the current vintage year.

VII.I.2 If allowances from different vintage years not contained in the cost-control account remain to be sold on the auction date, allowances in each vintage year shall be sold in a separate bidding process.

VII.J. Auction Purchase Limit.

VII.J.1 The auction purchase limit is the maximum number of allowances offered at each auction that can be purchased by any entity or group of entities with a direct corporate association.

VII.J.2 Purchase Limit Values.

VII.J.2.a. The purchase limit for each covered entity or direct corporate association containing covered entities is 25 percent of the allowances offered for auction.

VII.J.2.b. The purchase limit for each other participant is 4 percent of the allowances offered for auction.

VII.J.3 Purchase limits in this Section VII.J. do not apply to sales of allowances from prior vintage years that are not from the cost-control account.

VII.K. Determination of Winning Bidders and Settlement Price. The following process shall be used to determine winning bidders, amounts of allowances won, and a single auction settlement price:

VII.K.1 Each bid will consist of a price and the quantity of allowances, in multiples of 1,000 Colorado CO2e allowances, desired at that price.

VII.K.2 Each bidder may submit multiple bids.

VII.K.3 Beginning with the highest bid price, bids from each bidder will be considered in declining order by price, and the auction operator shall reject a bid for a bundle of 1,000 allowances if acceptance of the bid would result in violation of the purchase limit under Section VII.J.

VII.K.4 For sales of allowances from the current vintage year, bids from all bidders will be ranked from highest to lowest by price. Beginning with the highest bid and proceeding to successively lower bids, entities submitting bids at each price will be sold allowances until either:

VII.K.4.a. The next lower bid price is less than the auction reserve price or there are no more bids, in which case the price of the lowest bid above or equal to the auction reserve price becomes the auction settlement price; or

VII.K.4.b. The total quantity of allowances contained in the bids at the next lower bid price is greater than or equal to the number of allowances yet to be sold, in which case:

VII.K.4.b.(i) If the next lower bid price is greater than cost-control price, additional allowances from the cost-control account are added to the auction and sold as regular allowances until either:

VII.K.4.b.(i)( ) the cost-control account is exhausted, in which case the settlement price becomes the next lower bid price and the procedure for resolution of tie bids in Section VII.K.5 shall apply; or

VII.K.4.b.(i)(A) all bids at or above the cost-control price are filled, in which case the bid price of the last bid filled becomes the settlement price.

VII.K.4.b.(ii) If the next lower bid price is lower than or equal to the cost-control price but above the auction reserve price, the next lower bid price becomes the auction settlement price and the procedure for resolution of tie bids in Section VII.K.6. shall apply.

VII.K.5 For auctions of allowances from prior vintage years, bids from all bidders will be ranked from highest to lowest by price. Beginning with the highest bid and proceeding to successively lower bids, entities submitting bids at each price will be sold allowances until either:

VII.K.5.a. The next lower bid price is less than the auction reserve price or there are no more bids, in which case the price of the lowest bid above or equal to the auction reserve price becomes the auction settlement price; or

VII.K.5.b. The total quantity of allowances contained in the bids at the next lower bid price is greater than or equal to the number of allowances yet to be sold and the next lower bid price is greater than or equal to the auction reserve price, the next lower bid price becomes the auction settlement price and the procedure for resolution of tie bids in Section VII.K.6. shall apply.

VII.K.6 Resolution of tie bids. If the quantity of allowances contained in the bids placed at the auction settlement price is greater than the quantity of allowances available to be sold at that price, then:

VII.K.6.a. The auction administrator will calculate the share of the remaining allowances to be distributed to each entity bidding at the auction settlement price by dividing the quantity bid by that entity and accepted by the auction administrator by the total quantity of bids at the settlement price which were accepted by the auction administrator;

VII.K.6.b. The auction administrator will calculate the number of allowances distributed to each bidding entity by multiplying the bidding entity's share calculated in Section VII.K.6.a. by the number of allowances remaining, rounding the number down to the nearest whole number; and

VII.K.6.c. To distribute any remaining allowances, the auction administrator will assign a unique random number to each entity bidding at the auction settlement price. Beginning with the lowest random number, the auction administrator will assign one allowance to the last bundle purchased by each entity until the remaining allowances have been assigned.

VII.K.7 If the quantity of bids accepted by the auction administrator is less than the number of allowances offered for sale then some allowances will remain unsold.

VII.K.7.a. If allowances remain unsold at auction, the auction administrator will fulfill winning bids with allowances consigned to auction from limited use holding accounts.

VII.K.7.b. When there are insufficient winning bids to exhaust the allowances from limited use holding accounts, the auction administrator will sell allowances from each limited use holding account as follows:

VII.K.7.b.(i) First, any bids by an entity with allowances in the auction from its own limited use holding account shall be filled by allowances from that entity's limited use holding account.

VII.K.7.b.(ii) Second, with the remaining available allowances and bids, the auction administrator will sell an equal portion of allowances from limited use holding accounts as follows:

VII.K.7.b.(ii)( ) The auction administrator will calculate the number of allowances that will be sold on behalf of each limited use holding account by multiplying the entity's share of the total remaining available allowances by the number remaining to be sold to satisfy winning bids, rounding the resulting number down to the nearest whole number; and

VII.K.7.b.(ii)(A) To distribute any remaining allowance sales, the auction administrator will assign a unique random number to each entity consigning allowances. Beginning with the lowest random number, the auction administrator will assign one allowance sale to each entity until the remaining allowance sales have been assigned.

VII.K.7.c. Disposition of unsold allowances.

VII.K.7.c.(i) Unsold allowances from limited use holding accounts that were allocated pursuant to Section VI.A.1. or VI.A.4. will be added to the next auction.

VII.K.7.c.(ii) Unsold allowances from limited use holding accounts that were not allocated pursuant to Section VI.A.1. or VI.A.4. will be added to the next auction unless those allowances have been unsold for 24 months, in which case the unsold allowances will be allocated to the cost-control account pursuant to VI.B.2.

VII.L. After the auction administrator has notified the program director of the results of the auction the program director will:

VII.L.1 Review the conduct of the auction by the auction administrator, then certify whether the auction met the requirements of this Part C;

VII.L.2 After certification, direct the auction administrator to notify each winning bidder of the auction settlement price, the number of allowances that the bidder purchased, the bidder's total purchase cost, and the deadline and method for submitting payment;

VII.L.3 After certification, direct the financial services administrator to:

VII.L.3.a. Collect cash payments from winning bidders within 7 days of notifying them of the auction results;

VII.L.3.b. Use the bid guarantee to cover payment for allowance purchases by any entity that fails to make cash payment within 7 days after bidders are notified of results;

VII.L.3.c. Distribute auction proceeds to entities that consigned allowances for auction pursuant to Section VII.I.;

VII.L.3.d. Return any unused cash bid guarantee; and

VII.L.3.e. Return any bid guarantee form other than cash after receipt of payment for allowances awarded, provided that a bid guarantee in a form other than cash may be held by the financial services administrator for multiple auctions or reserve sales upon agreement by the financial services administrator and bidder.

VII.L.4 Upon determining that the payment for allowances has been transferred to entities that consigned allowances, transfer the allowances purchased into each winning bidder's holding account; and

VII.L.5 Following the auction, the program director will publish the following information:

VII.L.5.a. The names of the bidders;

VII.L.5.b. Auction settlement price; and

VII.L.5.c. Aggregated or distributional information on purchases with the names of the entities withheld.

VII.M. The auction bidding window may be delayed, rescheduled, or cancelled due to technical systems failures and to protect the environmental stringency of the Colorado program.

VII.M.1 The opening of the auction bidding window may be delayed or paused for no more than one hour by the program director due to technical systems failures.

VII.M.2 The bidding window may be rescheduled by the program director due to technical systems failures or to protect the environmental stringency of the Colorado program.

VII.M.3 Rescheduled Auctions.

VII.M.3.a. The auction bidding window must be rescheduled if possible to ensure the financial services administrator can use any bid guarantees submitted.

VII.M.3.b. No additional auction applications may be accepted.

VII.M.3.c. The financial services administrator will keep all bid guarantees to complete financial settlement of the auction after the rescheduled bidding window.

VII.M.3.d. No bid guarantees provided pursuant to Section VII. may be amended.

VII.M.3.e. If technical systems failures cannot be resolved and a bidding window cannot be rescheduled to meet the requirements of this section, then the program director will cancel the auction bidding window.

VIII. Trading and Banking Allowances.

VIII.A. Transfers of Compliance Instruments Between Accounts.

VIII.A.1 To initiate the process, the primary account representative or an alternative account representative of the source holding account for the transfer must submit a transfer request to the accounts administrator.

VIII.A.2 The primary account representative or an alternative account representative for the same entity must confirm the transfer request to the accounts administrator within 2 days of the initial submission of the transfer request.

VIII.A.3 The primary account representative or an alternate account representative for the destination account must confirm the transfer request to the accounts administrator within the time remaining in the 3 days following the initial submission of the transfer request in Section VIII.A.1.

VIII.B. Transfers between a single entity's holding and compliance accounts do not require confirmation by an account representative of the destination account pursuant to Section VIII.A.3.

VIII.C. Information Requirements for Transfer Requests.

VIII.C.1 The following information must be reported to the accounts administrator as part of a transfer request before any transfer of allowances can be recorded on the tracking system:

VIII.C.1.a. Holding account number of the source account and identification of two individuals who are the primary account representative and/or alternate account representatives initiating the transfer request;

VIII.C.1.b. Account number of destination account;

VIII.C.1.c. Type, quantity, and vintage of compliance instrument;

VIII.C.1.d. If the parties have agreed to a fixed price for the compliance instruments, the price in U.S. dollars; and

VIII.C.1.e. If the parties have not agreed to a fixed price, a brief description of the pricing method as well as the price resulting from the pricing method for the specific transfer.

VIII.C.2 Entities may enter a price of zero into the transfer request if the transfer request is submitted to fulfill one of the following transaction types and the entity discloses the transaction type in the transfer request:

VIII.C.2.a. The proposed transfer is between entities within a direct corporate association;

VIII.C.2.b. The proposed transfer is between an entity's holding account and its compliance account;

VIII.C.2.c. The proposed transfer is from a retail electricity seller to a federal power marketing authority to cover the emissions associated with power imported into Colorado by the federal power marketing authority and sold to the retail electricity seller within Colorado;

VIII.C.2.d. The proposed transfer is from a retail electricity seller to an entity operating a generation facility from which the retail electricity seller under a tolling agreement or other long-term power purchase agreement that does not specify a price or cost basis for the sale of the compliance instruments alone;

VIII.C.2.e. The proposed transfer results from a transaction agreement that incorporates compliance instrument requirements with other product sales or purchases, and specifies a total cost or cost basis for the transaction but does not specify a price or cost basis for the sale of the compliance instruments alone; or

VIII.C.2.f. The proposed transfer is from a rural electric cooperative association to its wholesale supplier of electricity where the wholesale supplier imported electricity into Colorado and sold the electricity to the association within Colorado.

VIII.C.3 Within 5 days of a request of the program director, parties to the transfer request must provide documentation about the transaction for which the transfer request was submitted.

VIII.C.3.a. The request for documentation may include the transaction agreement and related transaction confirmations that resulted in the transfer and must be sufficient to verify the information entered by the account representative into the fields required for the transfer request.

VIII.C.3.b. The program director will treat the documentation as confidential business information to the extent permitted by law.

VIII.C.4 Protection of Confidential Information. The program director will protect confidential information to the extent permitted by law and to the extent feasible by ensuring that the accounts administrator:

VIII.C.4.a. Releases information on the transfer price and quantity of compliance instruments in a manner that is timely and maintains the confidentiality of the parties to a transfer;

VIII.C.4.b. Except as needed for market oversight and investigation by the program director, protects as confidential all other information obtained through transfer requests;

VIII.C.4.c. Protects as confidential the quantity and serial numbers of compliance instruments contained in individual entity holding accounts; and

VIII.C.4.d. Releases information on the quantity of compliance instruments contained in compliance accounts in a timely manner that maintains the confidentiality of the identity of account holders.

VIII.D. General Prohibitions on Trading.

VIII.D.1 An entity may purchase and hold compliance instruments for later transfer to members of a direct corporate association to which the entity belongs. However, an entity cannot acquire allowances and hold them in its own holding account on behalf of any other entity, including the following restrictions:

VIII.D.1.a. An entity may not hold allowances in which a second entity has any ownership interest.

VIII.D.1.b. An entity may not hold allowances pursuant to an agreement that gives a second entity control over the holding or planned disposition of allowances while the instruments reside in the first entity's accounts, or control over the acquisition of allowances by the first entity. Provisions specifying a date to deliver a specified quantity of compliance instruments, or specifying a procedure to determine a quantity of compliance instruments for delivery and/or a delivery date, do not violate the prohibition.

VIII.D.2 A trade involving, related to, or associated with any of the following is prohibited:

VIII.D.2.a. Any manipulative or deceptive device in violation of this article;

VIII.D.2.b. A corner or an attempt to corner the market for a compliance instrument;

VIII.D.2.c. Fraud, or an attempt to defraud any other entity;

VIII.D.2.d. A false, misleading or inaccurate report concerning information or conditions that affect or tend to affect the price of a compliance instrument;

VIII.D.2.e. An application, report, statement, or document required to be filed pursuant to this article which is false or misleading with respect to a material fact, or which omits to state a material fact necessary to make the contents therein not misleading; or

VIII.D.2.f. Any trick, scheme, or artifice to falsify or conceal a material fact, including use of any false statements or representations, written or oral, or documents made by or provided to an entity on or through which transactions in compliance instruments occur, are settled, or are cleared.

VIII.D.2.g. A fact is material if it could influence a decision by the program director, the Division, or the Division's staff.

VIII.D.3 Restrictions on Registered Entities and Tracking System. If an entity violates any provision specified in this Part C, or in order to protect the environmental stringency of the program, the program director may:

VIII.D.3.a. Reduce the number of compliance instruments an entity is permitted to have in its holding account;

VIII.D.3.b. Suspend or revoke the registration of non-covered entities, provided that:

VIII.D.3.b.(i) A registered entity that has had its holding account revoked or suspended may not hold compliance instruments or register with the accounts administrator for another set of accounts in any capacity. If registration is revoked or suspended the entity must sell or voluntarily retire all compliance instruments in its holding account within 30 days of revocation; and

VIII.D.3.b.(ii) If registration is revoked or suspended and the entity fails to sell or voluntarily retire all compliance instruments in its holding account within 30 days of revocation or suspension, the accounts administrator will transfer the remaining allowances into the auction holding account for sale at auction on behalf of the entity;

VIII.D.3.c. Limit or prohibit transfers into or out of the holding account; or

VIII.D.3.d. Any combination of the above.

VIII.D.4 Transfer Request Deficiencies.

VIII.D.4.a. If the accounts administrator detects a deficiency in a transfer request before it is recorded into the tracking system:

VIII.D.4.a.(i) The accounts administrator will inform the entities submitting the request that the transfer request is deficient and inform the program director of the deficiency;

VIII.D.4.a.(ii) The accounts administrator will inform the entity responsible for the deficiency of the specific problem to be remedied;

VIII.D.4.a.(iii) The entities submitting the transfer request may resubmit the request with the deficiency corrected within the time limit set pursuant to Section VIII.A.; and

VIII.D.4.a.(iv) If the entities fail to submit an acceptable transfer request within the time limit, then they must either withdraw the transfer request or submit a new transfer request.

VIII.D.4.b. If the accounts administrator detects a deficiency in a transfer request after it is recorded into the tracking system:

VIII.D.4.b.(i) The accounts administrator will inform the entities submitting the request that the transfer request is deficient and inform the program director of the deficiency;

VIII.D.4.b.(ii) If the deficiency is based on the information submitted by the representative of the source account, the program director will inform the submitting representative of the specific deficiency;

VIII.D.4.b.(iii) If the entities that submitted the transfer request cannot correct the deficiency within five business days after notification by the accounts administrator, the program director may instruct the accounts administrator to reverse the transfer.

IX. Offsets.

IX.A. An offset project operator must ensure the requirements of Colorado offset credits are met. Any Colorado offset credit must:

IX.A.1 Result from the use of a compliance offset protocol that meets the requirements of Section IX.C. and is adopted by the Commission pursuant to Section IX.B. to provide confidence that offset credits represent GHG emission reductions or GHG removal enhancements that are real, additional, quantifiable, permanent, verifiable, and enforceable;

IX.A.2 Result from an offset project that meets the requirements specified in Section IX.D.;

IX.A.3 Result from an offset project that is listed pursuant to Section IX.E.;

IX.A.4 Result from an offset project that follows the monitoring, reporting and record retention requirements pursuant to Section IX.F.;

IX.A.5 Result from an offset project that is verified pursuant to Section IX.G.;

IX.A.6 Be issued pursuant to Section IX.H.; and

IX.A.7 When used for compliance under this Part C, be subject to the quantitative usage limit pursuant to Section IV.H**Error! Reference source not found.**.

IX.B. Procedures for Approval of Compliance Offset Protocols.

IX.B.1 The Commission shall provide public notice of and opportunity for public comment prior to approving any compliance offset protocols, including updates or modifications to existing compliance offset protocols.

IX.B.2 All compliance offset protocols shall be reviewed and periodically revised, if needed.

IX.B.3 In approving and revising compliance offset protocols, the Commission shall consider and take into account the potential for offset projects to deliver co-benefits to inhabitants of Colorado.

IX.C. Requirements for Compliance Offset Protocols.

IX.C.1 To be approved by the Commission, a compliance offset protocol must:

IX.C.1.a. Accurately determine the extent to which GHG emission reductions and GHG removal enhancements are achieved by the offset project type;

IX.C.1.b. Establish data collection and monitoring procedures relevant to the type of GHG emission sources, GHG sinks, and GHG reservoirs for that offset project type;

IX.C.1.c. Establish a project baseline that reflects a conservative estimate of business-as-usual performance or practices for the offset project type;

IX.C.1.d. Account for activity-shifting leakage and market-shifting leakage for the offset project type, unless the compliance offset protocol stipulates eligibility conditions for use of the compliance offset protocol that effectively address the risk of activity-shifting leakage and/or market-shifting leakage;

IX.C.1.e. Account for any uncertainty in quantification factors for the offset project type;

IX.C.1.f. Ensure GHG emission reductions and GHG removal enhancements are permanent;

IX.C.1.g. Include a mechanism to ensure permanence of GHG removal enhancements for sequestration offset project types;

IX.C.1.h. Establish the length of the crediting period pursuant to Section IX.C.2. for the relevant offset project type;

IX.C.1.i. Establish the eligibility and additionality of projects using standard criteria, and quantify GHG emission reductions and GHG removal enhancements using standardized baseline assumptions, emission factors, and monitoring methods; and

IX.C.1.j. Establish requirements for data verification, including a requirement that a third-party Division-accredited verification body confirm reported data.

IX.C.2 Crediting Periods. The crediting period for a non-sequestration offset project must be no less than 7 years and no greater than 10 years, unless specified otherwise in a compliance offset protocol. The crediting period for a sequestration offset project must be no less than 10 years and no greater than 30 years.

IX.D. Requirements for Offset Projects using Colorado Compliance Offset Protocols.

IX.D.1 General Requirements for Offset Projects.

IX.D.1.a. To qualify under the provisions set forth in this article, an offset project operator must ensure that an offset project:

IX.D.1.a.(i) Meets all of the requirements in a compliance offset protocol approved by the Commission pursuant to Section IX.B.;

IX.D.1.a.(ii) Meets the following additionality requirements, as well as any additionality requirements in the applicable compliance offset protocol, as of the date of offset project commencement:

IX.D.1.a.(ii)(A) The activities that result in GHG emission reductions and GHG removal enhancements are not required by law, regulation, or any legally binding mandate applicable in the offset project's jurisdiction, and would not otherwise occur in a conservative business-as-usual scenario;

IX.D.1.a.(ii)(B) The offset project commencement date occurs after December 31, 2021, unless otherwise specified in the applicable compliance offset protocol; and

IX.D.1.a.(ii)(C) The GHG emission reductions and GHG removal enhancements resulting from the offset project exceed the project baseline calculated by the applicable version of the compliance offset protocol under which the offset project has been listed pursuant to Section IX.E.;

IX.D.1.a.(iii) Meets all the requirements in this Part C for the applicable version of the compliance offset protocol under which the offset project has been listed pursuant to Section IX.E., where the applicable version of the compliance offset protocol is the version under which the offset project has been listed pursuant to Section IX.E.; and

IX.D.1.a.(iv) Is located in the State of Colorado.

IX.D.1.b. If any law, regulation, or legally binding mandate requiring GHG emission reductions or GHG removal enhancements comes into effect in Colorado, or in a jurisdiction outside Colorado, affecting the offset project, during an offset project's crediting period, then the offset project is eligible to continue to receive Colorado offset credits for those GHG emission reductions and GHG removal enhancements for the remainder of the offset project's crediting period, but the offset project may not renew that crediting period. If an offset project has not been listed prior to the law, regulation, or legally binding mandate going into effect, or the law, regulation, or legally binding mandate goes into effect before the offset project's crediting period renews, then only emission reductions or removal enhancements that are in excess of what is required to comply with those laws, regulations, and/or legally binding mandates are eligible for Colorado offset credits.

IX.D.2 Local, Regional, State, and National Regulatory Compliance and Environmental Impact Assessment Requirements.

IX.D.2.a. An offset program operator must fulfill all local, regional, state, and national requirements on environmental impact assessments that apply based on the offset project location.

IX.D.2.b. An offset project must fulfill all local, regional, state, and national environmental and health and safety laws and regulations that apply based on the offset project location and that directly apply to the offset project, including as specified in a compliance offset protocol.

IX.D.2.b.(v) The offset project is considered out of regulatory compliance if the project activities were subject to enforcement action by a regulatory oversight body during the reporting period, although whether such enforcement action has occurred is not the only consideration the Division may use in determining whether a project is out of regulatory compliance.

IX.D.2.b.(vi) Offset projects out of regulatory compliance are not eligible to receive Colorado offset credits during the period that the offset project is out of regulatory compliance.

IX.D.2.b.(i) The time period that the offset project is out of regulatory compliance begins on the date that the activity which led to the offset project being out of regulatory compliance actually began and not necessarily the date that the regulatory oversight body first became aware of the issue. For determining the initial date of the offset project being out of regulatory compliance the offsets project operator must provide one or more of the following to the Division:

IX.D.2.b.(i)(A) Documentation from the relevant local, state, or federal regulatory oversight body that expressly identifies the precise start date of the offset project being out of regulatory compliance. Documentation must include evidence of the start date such as continuous emissions monitoring system or other monitoring data, engineering estimates, satellite imagery, witness statements, or other reasonable method to aid in the identification of the precise start date; or

IX.D.2.b.(i)(B) Documentation of the date of the last inspection by the relevant local, state, or federal regulatory oversight body that did not indicate the offset project was out of regulatory compliance for the activity in question. The project will be considered out of regulatory compliance beginning the day after the inspection.

IX.D.2.b.(i)(C) If the last inspection described in Section IX.D.2.b.(i)(B) was prior to the beginning of the reporting period, or if documentation regarding the date the project was out of regulatory compliance is not provided as set forth in Section IX.D.2.b.(i)(A) or IX.D.2.b.(i)(B) above to the satisfaction of the Division, then the time period that the offset project is out of regulatory compliance, for purposes of the reporting period, commences at the beginning of the reporting period.

IX.D.2.b.(ii) For determining the date when the offset project returned to regulatory compliance, the offset project operator must provide documentation from the relevant local, state, or federal regulatory oversight body stating that the offset project is back in regulatory compliance. The date when the offset project is deemed to have returned to regulatory compliance is the date that the relevant local, state, or federal regulatory oversight body determines that the project is back in regulatory compliance. This date is not necessarily the date that the activity ends or the device is repaired, and may include time for the payment of fines or completion of any additional requirements placed on the offset project by the regulatory oversight body, as determined by the regulatory oversight body. If the regulatory oversight body does not provide a written determination regarding the date when the project returned to regulatory compliance to the satisfaction of the Division, the offset project operator may provide documentation to the Division from the regulatory oversight body clearly identifying the date the project returned to regulatory compliance. Documentation should be official dated correspondence with the relevant regulatory agency, such as a consent decree, inspection report, or other such documentation, identifying that the project has remedied the condition(s) that rendered it out of compliance. For purposes of this subsection, the Division may also take into consideration information pertaining to the date(s) the activity subject to enforcement action occurred; if the offset project operator has acknowledged responsibility for the activity; and the ongoing status of the enforcement proceedings with the relevant local, state, or federal regulatory oversight body. If the relevant regulatory oversight body does not provide a written determination regarding the date when the project returned to regulatory compliance to the satisfaction of the Division, and the offset project operator is unable to provide documentation clearly identifying the date the project returned to regulatory compliance to the satisfaction of the Division, then for purposes of the applicable reporting period, the offset project operator must use the end of the reporting period for the date when the offset project returned to regulatory compliance.

IX.D.2.b.(iii) Nothing in this section precludes the invalidation of Colorado offset credits issued for previous or subsequent reporting periods if the Division determines that the offset project was out of regulatory compliance in previous or subsequent reporting periods. The offset project will continue to be deemed out of regulatory compliance in subsequent reporting periods until the offset project operator provides the documentation demonstrating regulatory compliance identified in Section IX.D.2.b.(ii) above to the Division. Any Colorado offset credits that are invalidated may not be used for compliance. If a covered entity has already used an invalidated Colorado offset credit for compliance, that entity will have 180 days to replace it with a valid compliance instrument.

IX.D.2.c. The Division’s written determination and any supporting documents from the regulatory oversight body relating to the offset project being out of regulatory compliance and the timeframe identified for removal from the reporting period will be made public.

IX.D.3 Any offset project operator seeking to list an offset project situated on any of the following categories of land must demonstrate the existence of a limited waiver of sovereign immunity between the Division and the governing body of the tribe entered into pursuant to Section IX.E.9.:

IX.D.3.a. Land that is owned by, or subject to, an ownership or possessory interest of the tribe;

IX.D.3.b. Land that is Indian lands of the tribe, as defined by 25 U.S.C, Section 81(a)(1); or

IX.D.3.c. Land that is owned by any person, entity, or tribe, within the external borders of such Indian lands.

IX.D.4 Only a primary account representative or alternate account representative on the offset project operator's tracking system account may sign any documents or attestations to the Division or an offset project registry on behalf of the offset project operator for an offset project.

IX.E. Listing of Offset Projects Using Colorado Compliance Offset Protocols.

IX.E.1 General Requirements for Offset Project Operators Who Are Submitting an Offset Project for Listing. Before an offset project can be listed by the Division the offset project operator must:

IX.E.1.a. Register with the Division pursuant to Section III.; and

IX.E.1.b. Not be subject to any holding account restrictions imposed pursuant to Section X.

IX.E.2 General Requirements for Offset Project Listing. For offset projects being listed by the Division in an initial or renewed crediting period, the offset project operator must:

IX.E.2.a. Attest, in writing, to the Division as follows:

"I certify under penalty of perjury under the laws of the State of Colorado the GHG emission reductions and/or GHG removal enhancements for [project] from [date] to [date] will be measured in accordance with the [appropriate Division compliance offset protocol] and all information required to be submitted to the Division is true, accurate, and complete.";

IX.E.2.b. Attest, in writing, to the Division as follows:

"I understand I am voluntarily participating in the Colorado GHG Emission Reduction Program under Air Quality Control Commission Regulation 22, Part C, and by doing so, I am now subject to all regulatory requirements and enforcement mechanisms of this program and subject myself to the jurisdiction of Colorado as the exclusive venue to resolve any and all disputes arising from the enforcement of provisions in this article.";

IX.E.2.c. Attest in writing to the Division as follows:

"I understand that the offset project activity and implementation of the offset project must be in accordance with all applicable local, regional, and national environmental and health and safety laws and regulations that apply to the offset project location. I understand that offset projects are not eligible to receive Colorado offset credits for GHG emission reductions and GHG removal enhancements that are not in compliance with the requirements of the Colorado GHG Emission Reduction Program under Air Quality Control Commission Regulation 22, Part C.";

IX.E.2.d. Provide the Division all documentation required pursuant to the applicable compliance offset protocol for the project; and

IX.E.2.e. Disclose GHG emission reductions and GHG removal enhancements issued credit by any voluntary or mandatory programs for the same offset project being listed or any GHG emission reductions and GHG removal enhancements used for any GHG mitigation requirement.

IX.E.3 Review of Offset Project Listing Information. The Division and/or the offset project registry will review the offset project listing information submitted pursuant to Section IX.E. for completeness.

IX.E.4 Notice of Completeness for Offset Project Listing Information. The offset project operator will be notified after review by the Division or the offset project registry, within 30 calendar days of receiving the complete and accurate listing information, that the offset project may be listed. If the Division or the offset project registry determines that the information submitted is incomplete or that a denial of the listing information is required, the Division or the offset project registry will notify the offset project operator of this determination within 30 calendar days of receiving the listing information from the offset project operator.

IX.E.5 Timing for Offset Project Listing in an Initial Crediting Period. The offset project operator must submit the information in Section IX.E. to the Division or the offset project registry no later than the date at which the offset project operator submits its required offset project data report for its first reporting period under a compliance offset protocol to the Division or the offset project registry. The offset project operator must submit the listing information in Section IX.E. to the Division or an offset project registry no later than one year after offset project commencement, or no later than one year after meeting the requirements of Section IX.E.9., whichever is later. If the offset project operator does not submit the listing information in Section IX.E. for the offset project to the Division or an offset project registry within one year of offset project commencement, or within one year of meeting the requirements of Section IX.E.9, whichever is later, it will be ineligible to be listed under a compliance offset protocol and will not be issued Colorado offset credits.

IX.E.6 Listing Status of Offset Projects in an Initial Crediting Period. After the offset project operator submits the offset project for listing in an initial crediting period and the required documentation pursuant to Section IX.E., and the Division or the offset project registry has reviewed the offset project listing information for completeness, the offset project listing status will be "Listed Project." If the offset project is not accepted for listing by the offset project registry, the offset project operator may request the Division to make a final determination if the offset project meets the requirements to be listed for an initial crediting period by the offset project registry. In making this determination, the Division may consult with the offset project registry before making the final determination.

IX.E.7 Timing for Offset Project Listing in a Renewed Crediting Period. The offset project operator must submit the information in Section IX.E. for a renewed crediting period to the Division or the offset project registry no earlier than 18 months and no later than 9 months before conclusion of the initial crediting period or a previous renewed crediting period.

IX.E.8 Listing Status of Offset Projects in a Renewed Crediting Period. After the offset project operator submits the offset project for listing in a renewed crediting period and the required documentation pursuant to Section IX.E, and the Division or the offset project registry has reviewed the offset project listing information for completeness, the offset project listing status may remain "Listed Project" during the renewed crediting period. The verification body must determine that the offset project meets the additionality requirements in Section IX.D.1.b. as of the date of the commencement of the renewed crediting period when conducting offset verification services for the first reporting period of a renewed crediting period. If the offset project is not accepted for listing by the offset project registry, the offset project operator may request the Division to make a final determination if the project meets the requirements in Section IX. to be listed for a renewed crediting period by the offset project registry. In making this determination, the Division may consult with the offset project registry.

IX.E.9 Additional Offset Project Listing Requirements for Tribes. In addition to meeting the listing requirements in Section IX.E.1. through IX.E.8., tribes must meet the following requirements before offset projects located on the categories of land specified in Section IX.D.3. can be listed with the offset project registry pursuant to this section. The requirements of this article apply regardless of the category of land on which the offset project is located.

IX.E.9.a. The governing body of the tribe must enter into a limited waiver of sovereign immunity with the Division related to its participation in the requirements of the Colorado Greenhouse Gas Emission Reduction Program for the duration required by the applicable compliance offset protocol(s). This waiver must include a consent to suit by the Colorado Department of Public Health and Environment, Air Pollution Control Division of the, in the courts of the State of Colorado, with respect to any action in law or equity commenced by the Colorado Department of Public Health and Environment, Air Pollution Control Division, to enforce the obligations of the tribe with respect to its participation in the Colorado Greenhouse Gas Emission Reduction Program, irrespective of the form of relief sought, whether monetary or otherwise. Except for purposes of relief under this limited waiver, tribes shall be treated in the same manner as a Colorado public entity.

IX.E.9.b. The tribe must provide the Division with documentation demonstrating that the limited waiver of sovereign immunity entered into pursuant to Section IX.E.9.a. has been properly adopted in accordance with the tribe's constitution or other organic law, by-laws and ordinances, and applicable federal laws.

IX.E.9.c. For offset projects located on Indian lands, as defined in 25 U.S.C. Section 81(a)(1), the tribe must also provide the Division with proof of federal approval of the tribe's participation in the requirements of the

Colorado Greenhouse Gas Emission Reduction Program, or documentation from the U.S. Department of the Interior, Bureau of Indian Affairs, that federal approval is not required.

IX.E.10 Once the Division or the offset project registry approves an offset project for listing, the listing information is considered final, and may not be changed unless the offset project operator changes during the crediting period.

IX.E.10.a. If the offset project operator changes during the crediting period the new offset project operator must submit updated listing information for the information that pertains to the offset project operator to the Division or offset project registry within 30 calendar days of the change.

IX.E.10.b. If the offset project operator changes during the crediting period the new offset project operator must submit the information required pursuant to Section IX.E.2. to the Division or offset project registry within 30 calendar days of the change.

IX.E.11 Limitations for Crediting Period Renewals. A crediting period may be renewed if the offset project meets the requirements for additionality pursuant to Section IX.D.1.a.(ii) and in the applicable compliance offset protocol.

IX.E.11.a. The crediting period for non-sequestration offset projects may be renewed twice for the length of time identified by the compliance offset protocol.

IX.E.11.b. Sequestration offset projects are not subject to any renewal limits.

IX.E.12 Limitations for Listing Forest Offset Projects. Once a forest offset project has been issued Colorado offset credits, no other offset project may be listed with a project area including any land within the previously listed geographic boundary of the previous offset project unless the previous offset project was terminated due to an unintentional reversal or unless otherwise specified in a compliance offset protocol.

IX.F. Monitoring, Reporting, and Record Retention Requirements for Offset Projects.

IX.F.1 General Requirements for Monitoring Equipment for Offset Projects. The offset project operator must employ the procedures in the compliance offset protocol for monitoring measurements and project performance for offset projects. All required monitoring equipment must be maintained and calibrated in a manner and at a frequency required by the equipment manufacturer, unless otherwise specified in the applicable compliance offset protocol. All modeling, monitoring, sampling, or testing must be conducted in a manner consistent with the applicable procedure in the compliance offset protocol.

IX.F.2 The offset project operator must use the missing data methods as provided in a compliance offset protocol for that offset project type, if provided and applicable.

IX.F.3 An offset project operator must put in place all monitoring equipment or mechanisms required by the applicable version of the compliance offset protocol for that offset project type.

IX.F.4 Offset Project Reporting Requirements. An offset project operator shall submit an offset project data report to the offset project registry for each reporting period. Each offset project data report must cover a single reporting period. Reporting periods must be contiguous; there must be no gaps in reporting once the first reporting period has commenced. If the offset project operator fails to submit an offset project data report, then the offset project will be considered terminated and not eligible for Colorado offset credits. An offset project data report may be submitted after the deadline identified in Section IX.F.4.b., but before the end of the next reporting period, to maintain continuous reporting; however, no Colorado offset credits will be issued for the GHG emission reduction or removal enhancements quantified and reported in the post-deadline offset project data report pursuant to Section IX.F.4.c. The offset project data report shall contain the information required by the applicable version of the compliance offset protocol for that offset project type and:

IX.F.4.a. The primary account representative or alternate account representative on the offset project operator's tracking system account must attest, in writing, to the Division as follows:

I certify under penalty of perjury under the laws of the State of Colorado the GHG emission reductions and/or GHG removal enhancements for [project] from [date] to [date] are measured in accordance with the [appropriate compliance offset protocol] and all information required to be submitted to the Division in the offset project data report is true, accurate, and complete."

This attestation must be provided with each version of the offset project data report to the offset project registry.

IX.F.4.b. An offset project data report must be submitted within four months after the conclusion of each reporting period. For a submission to be considered valid, the submitted offset project data report must include any required attestation(s) and must be signed by the offset project operator's primary account representative or alternate account representative.

IX.F.4.c. If an offset project data report is not submitted to the offset project registry as required by this Part C by the four-month reporting deadline in Section IX.F.4.b., the GHG emission reductions and GHG removal enhancements quantified and reported in the offset project data report are not eligible to be issued Colorado offset credits.

IX.F.4.d. Each version of an offset project data report submitted to the offset project registry must specify the version number and the date submitted.

IX.F.5 Requirements for Record Retention for Offset Projects. An offset project operator must meet the following requirements:

IX.F.5.a. The offset project operator must retain the following documents:

IX.F.5.a.(i) All information submitted as part of the offset project data report;

IX.F.5.a.(ii) Documentation of the offset project boundary, including a list of all GHG emission sources, GHG sinks, and GHG reservoirs included in the offset project boundary and the project baseline, and the calculation of the project baseline, project emissions, GHG emission reductions, and GHG removal enhancements;

IX.F.5.a.(iii) Fuel use and any other underlying measured or sampled data used to calculate project baseline emissions, GHG emission reductions, and GHG removal enhancements for each source, categorized by process and fuel, or material type;

IX.F.5.a.(iv) Documentation of the process for collecting fuel use or any other underlying measured or sampled data for the offset project and its GHG emission sources, GHG sinks, and GHG reservoirs for quantifying project baseline emissions, project emissions, GHG emission reductions, and GHG removal enhancements;

IX.F.5.a.(v) Documentation of all project baseline emissions, project emissions, GHG emission reductions, and GHG removal enhancements;

IX.F.5.a.(vi) All point of origin and chain of custody documents required by a compliance offset protocol, if applicable;

IX.F.5.a.(vii) All chemical analyses, results, and testing-related documentation for material and sources used for inputs to project baseline emissions, project emissions, GHG emission reductions, and GHG removal enhancements;

IX.F.5.a.(viii) All model inputs or assumptions used for quantifying project baseline emissions, project emissions, GHG emission reductions, and GHG removal enhancements;

IX.F.5.a.(ix) Any data used to assess the accuracy of project baseline emissions, GHG emission reductions, and GHG removal enhancements from each offset project GHG emission source, GHG sink, and GHG reservoir, categorized by process;

IX.F.5.a.(x) Quality assurance and quality control information including information regarding any measurement gaps, missing data substitution, calibrations or maintenance records for monitoring equipment, or models providing data for calculating project baseline emissions, project emissions, GHG emission reductions, and GHG removal enhancements;

IX.F.5.a.(xi) A detailed technical description of any offset project continuous measurement/monitoring system, including documentation of any findings and approvals by federal, state, and local agencies;

IX.F.5.a.(xii) Raw and aggregated data from any measurement system;

IX.F.5.a.(xiii) Documentation of any changes over time and a log book which must document tests, down-times, calibrations, servicing, and maintenance for any measurement/monitoring equipment providing data for project baseline calculations, project emissions, GHG emission reductions, and GHG removal enhancements;

IX.F.5.a.(xiv) For sequestration offset projects, documentation of inventory methodologies and sampling procedures including all calculation methodologies and equations used, and any data related to plot sampling; and

IX.F.5.a.(xv) Any other documentation or data required to be retained by a compliance offset protocol, if applicable.

IX.F.5.b. Documents listed in Section IX.F.5.a. shall be retained in paper, electronic, or other usable format for a minimum of 15 years following the issuance of Colorado offset credits related to those documents. The documents retained pursuant to this section must be sufficient to allow for the verification of each offset project data report.

IX.F.5.c. Upon request by the Division or the offset project registry, the offset project operator must provide to the Division or the offset project registry all documents pursuant to this section, including data used to develop an offset project data report, within 10 calendar days of the request.

IX.F.6 General Procedure for Interim Data Collection.

IX.F.6.a. This Section IX.F.6. only applies if a compliance offset protocol does not already include methods, or does not include a specific method for the data in question, for collecting or accounting for data in the event of missing data due to an unforeseen breakdown of gas or fuel analytical data monitoring equipment or other data collection systems.

IX.F.6.b. In the event of an unforeseen breakdown of offset project data monitoring equipment and gas or fuel flow monitoring devices required for the GHG emission reductions and GHG removal enhancement estimation, the Division may authorize an offset project operator to use an interim data collection procedure if the Division determines that the offset project operator has satisfactorily demonstrated that:

IX.F.6.b.(i) The breakdown may result in a loss of more than 20 percent of the source’s data for the year covered by an offset project data report;

IX.F.6.b.(ii) The data monitoring equipment cannot be promptly repaired or replaced without shutting down a process unit significantly affecting the offset project operations, or that the monitoring equipment must be replaced and replacement equipment is not immediately available;

IX.F.6.b.(iii) The interim procedure will not remain in effect longer than is reasonably necessary for repair or replacement of the malfunctioning data monitoring equipment; and

IX.F.6.b.(iv) The request was submitted within 30 calendar days of the breakdown of the data monitoring equipment.

IX.F.6.c. An offset project operator seeking approval of an interim data collection procedure must, within 30 calendar days of the monitoring equipment breakdown, submit a written request to the Division that includes all of the following:

IX.F.6.c.(i) The proposed start date and end date of the interim procedure;

IX.F.6.c.(ii) A detailed description of what data are affected by the breakdown;

IX.F.6.c.(iii) A discussion of the accuracy of data collected during the interim procedure compared with the data collected under the offset project operator's usual equipment-based method; and

IX.F.6.c.(iv) A demonstration that no feasible alternative procedure exists that would provide more accurate emissions data.

IX.F.6.d. The Division may limit the duration of the interim data collection procedure or include other conditions for approval.

IX.F.6.e. Data collected pursuant to an approved interim data collection procedure shall be considered captured data for purposes of compliance with a compliance offset protocol. When approving an interim data collection procedure, the Division shall determine whether the accuracy of data collected under the procedure is reasonably equivalent to data collected from properly functioning monitoring equipment, and if it is not, the relative accuracy to assign for purposes of assessing possible offset material misstatement or a reduction in the offsets awarded to compensate for the data collection uncertainty.

IX.F.7 General Procedure for Approving Alternate Monitoring and Measurement Methods Pursuant to Compliance Offset Protocols.

IX.F.7.a. This Section IX.F.7. applies only to alternate methods for monitoring and measurement that were not in common usage at the time when the Division adopted the compliance offset protocol under which an offset project data report is being submitted. Alternate methods may include remote sensing methods for forestry or other alternate methods that meet the requirements of this section.

IX.F.7.b. An offset project operator seeking approval of an alternate monitoring and measurement method must, at least 90 days prior to the beginning of the reporting period in which the alternate method will be used, submit a written request to the Division that includes all of the following:

IX.F.7.b.(i) The name and identification numbers of the offset project for which the alternate method is proposed;

IX.F.7.b.(ii) The beginning and end dates of the reporting period for which the alternate method is proposed;

IX.F.7.b.(iii) A detailed description of the alternate method. This description must include:

IX.F.7.b.(iii)(A) The purpose for which the alternate method is proposed;

IX.F.7.b.(iii)(B) A discussion of the accuracy of the alternate method, including any peer-reviewed literature or other information that the offset project operator believes may aid the Division in making a determination of the eligibility of the method; and

IX.F.7.b.(iii)(C) A detailed analysis identifying how the alternate method is consistent with the relevant requirements, and not explicitly prohibited by the applicable compliance offset protocol.

IX.F.7.c. The Division may approve an alternate method on an interim basis for one reporting period to review the accuracy of the method. Approval of an alternate method on an interim basis in itself does not provide any right to approval on a longer-term basis. The Division may also include other conditions as part of its interim approval.

IX.F.7.c.(i) Before approving an alternate method, the Division shall determine that the accuracy of the alternate method is at least reasonably equivalent to the accuracy of the method(s) commonly employed when the compliance offset protocol was adopted and that the alternate method is capable of being verified to a reasonable level of assurance.

IX.F.7.c.(ii) Data collected pursuant to an approved alternate method shall be considered in compliance with the requirements of the relevant compliance offset protocol.

IX.F.7.c.(iii) The Division may request additional information from the offset project operator seeking approval of an alternate method prior to approving any request. The Division shall provide written notification to the offset project operator of approval or disapproval of the interim alternate method within 60 days of receipt of the request, or within 30 days of receipt of any additional information requested by the Division, whichever is later.

IX.F.7.c.(iv) A request for approval of an alternate method may only be submitted for a reporting period for which a project is receiving a full offset verification.

IX.F.7.c.(v) If information comes to the Division's attention subsequent to approving an alternate method indicating that the alternate method is not at least reasonably equivalent to the accuracy of the method(s) commonly employed when the compliance offset protocol was adopted, or is not capable of being verified to a reasonable level of assurance, the Division may rescind approval of the alternate method at any time. If after using the alternate method for one reporting period the Division has not determined that the alternate method is not at least reasonably equivalent to the accuracy of the method(s) commonly employed when the compliance offset protocol was adopted, or is not capable of being verified to a reasonable level of assurance, the Division may approve the alternate method, including any conditions, on a permanent basis.

IX.F.7.c.(vi) For the purposes of this section "common usage" means a method that is demonstrated to be in use by an offset project using the same protocol type (e.g., U.S. Forests, livestock, etc.) on the compliance or voluntary market in the U.S. at the time of adoption of the compliance offset protocol version.

IX.G. Verification of GHG Emission Reductions and GHG Removal Enhancements from Offset Projects.

IX.G.1 General Requirements. An offset project operator must obtain the services of a Division-accredited verification body as determined in the offset project protocol for the purposes of verifying offset project data reports submitted under this Part C.

IX.G.2 Timing for Submittal of offset verification statements to the offset project registry. Any offset verification statement must be received by the offset project registry within 11 months after the conclusion of the reporting period for which offset verification services were performed. If the offset verification statement is not submitted to the offset project registry by the verification deadline, the GHG emission reductions and GHG removal enhancements quantified and reported in the offset project data report are not eligible to be issued Colorado offset credits.

IX.G.3 Each offset project data report submitted by the offset project operator must be verified by the verification body and the verification body must issue one offset verification statement for each offset project data report that it verifies for the offset project operator.

IX.G.4 Rotation of Verification Bodies. An offset project shall not have more than any six out of nine consecutive reporting periods verified by the same verification body.

IX.H. Issuance of Colorado Offset Credits.

IX.H.1 One Colorado offset credit, which represents one metric ton of CO2e for a direct GHG emission reduction or direct GHG removal enhancement, will be issued only for a GHG emission reduction or GHG removal enhancement that occurs during a reporting period. One Colorado offset credit will be issued for each metric ton of CO2e only if:

IX.H.1.a. An offset project registry has listed the offset project pursuant to Section IX.E.;

IX.H.1.b. The Division-accredited verification body verified the GHG emission reduction or direct GHG removal enhancement; and

IX.H.1.c. The offset project registry has received offset project data report that has been verified for which Colorado offset credits would be issued.

IX.H.2 The offset project registry will determine whether the GHG emission reductions and GHG removal enhancements meet the requirements of Section IX.H.1., the information submitted pursuant to Section IX.H.1. is complete, and verification meets the standards of Section IX.G. within 75 calendar days of receiving it.

IX.H.3 The Division will determine whether the GHG emission reductions and GHG removal enhancements meet the requirements of this Part C and the applicable compliance offset protocol within 75 calendar days of receiving complete and accurate information.

IX.H.4 Before the Division issues a Colorado offset credit pursuant Section IX.H. for GHG emission reductions and GHG removal enhancements achieved by an offset project in a reporting period, the primary account representative or alternate account representative on the offset project operator's tracking system account must attest, in writing, to the Division as follows:

IX.H.4.a. "I certify under penalty of perjury under the laws of the State of Colorado the GHG emission reductions or GHG removal enhancements for [project] from [date] to [date] have been measured in accordance with the [appropriate compliance offset protocol] and all information required to be submitted to the Air Pollution Control Division is true, accurate, and complete.";

IX.H.4.b. "I understand I am voluntarily participating in the Colorado Greenhouse Gas Emission Reduction Program under Air Quality Control Commission Regulation 22, Part C, and by doing so, I am now subject to all regulatory requirements and enforcement mechanisms of this program and subject myself to the jurisdiction of Colorado as the exclusive venue to resolve any and all disputes arising from the enforcement of provisions in this article.";

IX.H.4.c. "I understand that the offset project activity and implementation of the offset project must be in accordance with all applicable local, regional, and national environmental and health and safety regulations that apply based on the offset project location. I understand that offset projects are not eligible to receive Colorado offset credits for GHG emission reductions and GHG removal enhancements that are not in compliance with the requirements of Air Quality Control Commission Regulation 22, Part C.";

IX.H.4.d. "I certify under penalty of perjury under the laws of the State of Colorado all information provided to the Air Pollution Control Division for issuance of Colorado offset credits is true, accurate, and complete."; and

IX.H.4.e. "I certify under penalty of perjury under the laws of the State of Colorado that the GHG emission reductions and GHG removal enhancements for which I am seeking Colorado offset credits have not been issued any offset credits or been used for any GHG mitigation requirements in any other voluntary or mandatory program."

IX.H.5 Issuance Process.

IX.H.5.a. The Division will issue a Colorado offset credit for GHG emission reductions and removal enhancements achieved in a reporting period for an offset that meets the requirements in Section IX. no later than 15 calendar days after the Division makes a determination under Section IX.H.3., as long as the attestations required in Section IX.H.4. have been received by the Division prior to its determination.

IX.H.5.b. The Division will give each Colorado offset credit issued a unique serial number and transfer the Colorado offset credits into the holding account of the offset project operator.

## X. Enforcement and Penalties

X.A. If an entity fails to surrender a sufficient number of compliance instruments to its compliance account to meet its compliance obligation, there is a separate violation of this Part C for each required compliance instrument that has not been surrendered.

X.B. If an entity fails to reduce emissions from a facility for which it is responsible as required by Section IV.F., there is a separate violation of this Part C for each ton of excess emissions from each such facility.

X.C. It is a violation to submit any record, information, or report required by this article that:

X.C.1 Falsifies, conceals, or covers up by any trick, scheme, or device a material fact;

X.C.2 Makes any false, fictitious or fraudulent statement or representation;

X.C.3 Makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry; or

X.C.4 Omits material facts from a submittal or record.

A fact is material if it could probably influence a decision by the program director, the Division, or the Division's staff.

X.D. The penalty for each violation may be up to $47,357 per day. In determining the amount of the penalty, the program director shall consider the following factors:

X.D.1 The impact of a source on a disproportionately impacted community;

X.D.2 The violator's compliance history;

X.D.3 Good-faith efforts on behalf of the violator to comply

X.D.4 Payment by the violator of penalties previously assessed for the same violation;

X.D.5 Duration of the violation;

X.D.6 Economic benefit of noncompliance to the violator;

X.D.7 Impact on, or threat to, the public health or welfare or the environment as a result of the violation particularly in disproportionately impacted communities;

X.D.8 Malfeasance; and

X.D.9 Whether legal and factual theories were advanced for purposes of delay.

X.E. In addition to the factors set forth in Section X.D., the following circumstances shall be considered as grounds for reducing or eliminating civil penalties:

X.E.1 The voluntary and complete disclosure by the violator of such violation in a timely fashion after discovery of the noncompliance;

X.E.2 Full and prompt cooperation by the violator following disclosure of the violation including, when appropriate, entering into a legally enforceable commitment to undertake compliance and remedial efforts;

X.E.3 The existence and scope of a regularized and comprehensive environmental compliance program or an environmental audit program at the violator;

X.E.4 Substantial economic impact of a penalty on the violator;

X.E.5 Nonfeasance;

X.E.6 Whether allowances were not available to the violator, notwithstanding the violator's use of best efforts to obtain the required allowances; and

X.E.7 Other mitigating factors the program director determines are reasonable to consider.

XI. Linking to External Programs.

XI.A. Procedure for Approval of External Greenhouse Gas Trading Systems.

XI.A.1 The Commission may approve a linkage with an external GHG ETS after making the following findings:

XI.A.1.a. The jurisdiction with which the Commission proposes to link has adopted program requirements for GHG emission reductions, including, but not limited to, offsets, that are equivalent to or stricter than the corresponding requirements of the Colorado program established in this Part C.

XI.A.1.b. Under the proposed linkage, the State of Colorado is able to enforce the Colorado program's requirements against any entity subject to regulation under the Colorado program, and against any entity located within the linking jurisdiction to the maximum extent permitted under the United States and Colorado Constitutions.

XI.A.1.c. The proposed linkage provides for enforcement of applicable laws by Colorado or by the linking jurisdiction of program requirements that are equivalent to or stricter than the corresponding requirements of the Colorado program.

XI.A.1.d. The proposed linkage will not impose any significant liability on Colorado or any Colorado state agency for any failure associated with the linkage.

XI.B. Interchange of Compliance Instruments with Linked External Greenhouse Gas Emissions Trading Systems.

XI.B.1 Once a linkage is approved, a compliance instrument issued by the approved external GHG ETS may be used to meet a compliance obligation in the Colorado program.

XI.B.2 An allowance issued by an approved external GHG ETS is not subject to a quantitative usage limit.

XI.B.3 Offset credits issued by an approved external GHG ETS are subject quantitative usage limits as if they were Colorado offset credits.

XI.B.4 Once a linkage is approved, a compliance instrument issued by Colorado's program may be used to meet a compliance obligation within any approved external GHG ETS.

XI.B.5 The administrator of the approved external GHG ETS must agree to inform the program director of any of the serial numbers of Colorado compliance instruments that the external GHG ETS accepts for compliance.

XI.B.6 The program director will agree to inform the appropriate official in the approved external GHG ETS of any of the serial numbers of compliance instruments accepted by Colorado for compliance.

XI.B.7 The program director will register into the retirement account compliance instruments issued by Colorado that are used for compliance within the approved external GHG ETS, along with information identifying the external GHG ETS actually retiring the compliance instruments.

XI.C. If an approved external GHG ETS has taken an official act to revoke, repeal, or indefinitely suspend its program, or if one of the linkage findings made pursuant to Section XI.A. is no longer supported, the program director may petition the Commission to suspend, revoke, or repeal the approved linkage. If the Commission takes such action, the program director may limit transfers in or out of holding accounts, modify auction notices, modify holding limits, and cancel or issue additional compliance instruments to ensure the environmental stringency of the Colorado program is maintained as if there had not been a linkage approved with the external GHG ETS.

XI.C.1 Within 24 hours of taking action to suspend, revoke, or repeal the approved linkage, the program director shall post publicly the specific action taken with an explanation of why it was necessary to the Colorado program website.

XI.C.2 The public information will include:

XI.C.2.a. A contact name for questions regarding the action;

XI.C.2.b. Duration of the action, if known;

XI.C.2.c. Any details on the status of existing compliance instruments in accounts; and

XI.C.2.d. Any other relevant information.

XII. Colorado Climate Board.

XII.A. The Colorado Climate Board shall be created.

XII.B. The Board shall consist of the following members:

XII.B.1 The Commission shall appoint thirteen members to the Board no later than September 1, 2021. Members appointed under this subsection must be residents of Colorado; well informed in energy, climate, and environmental justice issues; and shall include the following:

XII.B.1.a. One member who is a representative of the Southern Ute Indian Tribe of the Southern Ute Reservation and one member who is a representative of the Ute Mountain Tribe of the Ute Mountain Reservation;

XII.B.1.b. Three members who are residents of disproportionately impacted communities.

XII.B.1.c. One member of the Public Utilities Commission, if willing serve, and if not, another individual with comparable expertise in the energy sector;

XII.B.1.d. One member who has expertise in climate mitigation strategies;

XII.B.1.e. One member who is an economist or who has experience and expertise in conservation finance;

XII.B.1.f. One member who has expertise in industrial energy use;

XII.B.1.g. One member with expertise in sustainable transportation issues;

XII.B.1.h. The director of the Office of Just Transition, if willing to serve, and if not someone with comparable expertise in statewide matters of just transition;

XII.B.1.i. One member with expertise in natural and working lands;

XII.B.1.j. One representative of an employee membership organization; and

XII.B.1.k. One at-large member.

XII.C. The term of office of each member appointed to the Colorado Climate Board is four years, but the members of the Board may be removed by the Commission for cause. Before the expiration of the term of a member, the Commission shall appoint a successor to assume the duties of the member on July 1 of the next following year.

XII.D. Notwithstanding the term of office specified in Section XII.C., of the members first appointed by the Commission to the Colorado Climate Board:

XII.D.1 Three shall serve for terms ending July 1, 2022.

XII.D.2 Three shall serve for terms ending July 1, 2023.

XII.D.3 Four shall serve for terms ending July 1, 2024.

XII.D.4 Four shall serve for terms ending July 1, 2025.

XII.E. A member is eligible for reappointment, but no member may serve more than two consecutive terms. In case of any vacancy during the term of any member, the Commission shall make an appointment to become immediately effective for the unexpired term.

XII.F. The Commission shall select one of the members as chairperson and another as vice chairperson, for terms and with ministerial duties and powers necessary for the performance of the functions of the offices as the Board determines.

XII.G. A majority of the members of the Board constitutes a quorum for the transaction of business.

XII.H. The Board shall meet once during each calendar quarter at a time and place determined by the chairperson. The Board shall endeavor to hold meetings at various locations throughout the state. The Board may hold additional meetings at times and places determined by the chairperson or the program director, within the discretion of each, or as requested by a majority of the members.

XII.I. Duties of the Board.

XII.I.1 The Board shall provide the program director with guidance on projects to consider for allowance allocation under Section VI.B.3., based on the criteria set forth in Section VI.B.3.

XII.I.2 The guidance shall include information and recommendations on how many allowances to allocate to specific projects and how the projects meet the criteria set forth in Section VI.B.3.

XII.I.3 Guidance must be approved by the Board by a majority vote of the Board members present at a meeting. The guidance may also include the viewpoints of individual board members who voted not to approve the guidance.

XII.J. Members of the Board are not entitled to compensation but may be reimbursed from funds available to the Board for actual and necessary travel and other expenses the members incur in the performance of the members' official duties, as allowed under Colorado law.

XII.K. In carrying out their duties under this program, the Board shall take into consideration best available science.

XII.L. The Board shall hold public meeting and provide an opportunity for public comment in carrying out the Board's activities. Before the Board makes a recommendation on allocations of allowances, it must solicit feedback on the proposed projects from residents of, workers in, and representatives of disproportionately impacted communities and hold a meeting at which these individuals and other members of the public have an opportunity to comment on the proposed projects.

XII.M. The Division shall provide clerical, technical, and management personnel to serve the Board. The Board may request support from other agencies as needed.

XII.N. The Board may adopt such standards and procedures as the Board considers necessary for the operation of the Board.

XIII. Review of Program Determinations.

XIII.A. The program director is the Division's designee for purposes of implementing the Colorado Greenhouse Gas Emission Reduction Program, and all determinations of the program director are effective and reviewable to the same extent as if they were determinations of the Division.

XIII.B. An entity affected or aggrieved by a determination of the program director or Division made pursuant to this Part C may request a hearing before the Commission for review of the program director or Division's action. The request for a hearing must be filed with the Commission within twenty days after the action to be challenged. The hearing shall be held in accordance with the provisions of Section VI. of the Commission's Procedural Rules and sections 25-7-119 and 24-4-105, C.R.S.

XIII.B.1 For determinations designated time-sensitive by the program director or Division, the Commission shall make all reasonable efforts to expedite the hearing as permitted by law.

XIII.C. A final order or determination of the Commission after a hearing is subject to judicial review in accordance with sections 25-7-120 and 24-4-106, C.R.S.

**PART D General Provisions**

[*Omitted for brevity*]

**PART E Statement of Basis, Specific Statutory Authority, and Purpose**

I. Adopted: May 22, 2020

[*Omitted for brevity*]

II. Adopted: [Date of adoption]

This Statement of Basis, Specific Statutory Authority, and Purpose complies with the requirements of the State Administrative Procedure Act, § 24-4-103(4), C.R.S., the Colorado Air Pollution Prevention and Control Act, §§ 25-7-110 and 25-7-110.5., C.R.S., and the Air Quality Control Commission's ("Commission") Procedural Rules, 5 Code Colo. Reg. §1001-1.

## Basis

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 §25-7-102 of the Act, and Senate Bill 2019-096 (concerning the collection of greenhouse gas emissions data) (SB 19-096) creating §25-7-140 of the Act.

In HB 19-1261, now codified in part at §§25-7-102(2) and -105(1)(e), 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." § 25-7-102(2), C.R.S. It also acknowledged that "Colorado is already experiencing harmful climate impacts, including declining snowpack, prolonged drought, more extreme heat, elevated wildfire risk and risk to first responders, widespread beetle infestation decimating forests, increased risk of vector-borne diseases, more frequent and severe flooding, more severe ground-level ozone pollution causing respiratory damage and loss of life, decreased economic activity from outdoor recreation and agriculture, and diminished quality of life. Many of these impacts disproportionately affect rural communities, communities of color, youth and the elderly, and working families. Reducing statewide greenhouse gas pollution will protect these frontline communities, first responders, and all Colorado residents from these and other climate impacts." § 25-7-102(2), C.R.S. By reducing greenhouse gas pollution, Colorado will also reduce other harmful air pollutants, which will, in turn, improve public health, reduce health care costs, improve air quality, and help sustain the environment.

Additionally, reducing GHG pollution will create new markets, spur innovation, drive investments in low-carbon technologies, and put Colorado squarely on the path to a modern, resilient, one-hundred-percent clean economy. Continuing to encourage these types of achievements is beneficial. By exercising a leadership role, Colorado will also position its economy, technology centers, financial institutions, and businesses to benefit from national and international efforts to reduce greenhouse gases.

Consequently, the General Assembly established Colorado's statewide GHG reduction goals requiring the Commission to implement regulations to achieve a twenty six percent reduction of statewide GHG by 2025; a fifty percent reduction by 2030; and a ninety percent reduction by 2050 as compared to 2005 levels. § 25-7-102(2) (g), C.R.S. To accomplish these important goals the legislature also passed SB 19-096, now codified as §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, § 25-7-140(2)(a)(I), C.R.S., and second, by July 1, 2020, to notice a rulemaking that proposes rules to implement measures allowing the state to cost-effectively meet its GHG reduction goals, § 25-7-140(2)(a)(III), C.R.S.

With respect to GHG reporting and the statewide inventory, §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." Sections 25-7-105(1)(e) and 140(2)(a)(III), C.R.S., further requires the Commission to implement GHG reduction strategies to achieve the reduction goals set forth in §25-7-102(2)(g), C.R.S.

Section 25-7-140(2)(a)(I), C.R.S., also requires these rules to "include requirements for providers of retail or wholesale electric service in the State of Colorado to track and report emissions from all generation sources within the state and elsewhere that electricity consumption by their customers in this state causes to be emitted." Section 25-7-105, C.R.S, setting forth the duties of the Commission, also directs development of rules for evaluating how public utilities are meeting obligations under Clean Energy Plans with the Public Utility Commission through considerations of facility ownership and purchased power. Section 25-7-1051(e)(VIII)(E), C.R.S.

Amendments to Regulation 22, Part A are intended to further satisfy the requirements set forth by the General Assembly in §25-7-140(2)(a)(I), C.R.S., with respect to statewide GHG reporting for fuel suppliers and importers, which were not covered by Part A as originally adopted.

Regulation 22, Part C is intended to create a comprehensive program to ensure that Colorado achieves reductions consistent with the reduction goals set forth in in §25-7-102(2)(g), C.R.S. The existing Regulation 22, in combination with other Commission regulations, is insufficient to ensure that Colorado achieves the mandatory reductions on the schedule set forth in the statute.

**Specific Statutory Authority**

The Act, specifically §25-7-105(1), C.R.S., directs the Commission to promulgate such rules and regulations as are consistent with the legislative declaration set forth in Section 25-7-102, C.R.S., and that are necessary for the proper implementation and administration of the Act.

Section 25-7-102(2), C.R.S., declares that “climate change adversely affects Colorado’s economy, air quality and public health, ecosystems, natural resources, and quality of life” that reducing GHG is necessary “to limit the increase in the global average temperature” and that “reducing [GHG], Colorado will also reduce other harmful air pollutants, which will, in turn, improve public health, reduce health care costs, improve air quality, and help sustain the environment[.]” Further, §25-7-102(2), C.R.S., declares that reducing GHG will result in economic benefits to Colorado by creating new markets, spurring innovation, and driving investment in low-carbon technologies thus positioning Colorado’s “economy, technology centers, financial institutions, and businesses to benefit from national and international efforts to reduce [GHG.]” § 25-7-102(2)(f), C.R.S.

Section 25-7-102(2)(g), C.R.S., sets emission reduction goals of, at a minimum, a twenty-six percent reduction in statewide greenhouse gas pollution by 2025, a fifty percent reduction in statewide greenhouse gas pollution by 2030, and a ninety percent reduction in statewide greenhouse gas pollution by 2050, all measured relative to 2005 statewide greenhouse gas pollution levels. “Statewide greenhouse gas pollution” means the total net statewide anthropogenic emissions of carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, nitrogen trifluoride, and sulfur hexafluoride, expressed as carbon dioxide equivalent calculated using a methodology and data on radiative forcing and atmospheric persistence deemed appropriate by the commission.

Section 25-7-105(1)(e)(II), C.R.S,. requires the Commission to timely promulgate rules and regulations to meet Colorado’s 2025, 2030, and 2050 greenhouse gas emission reduction goals. The implementing rules may take into account other relevant laws and rules, as well as voluntary actions taken by local communities and the private sector. The Commission is required to revise the implementation rules and regulations as necessary over time to ensure timely progress toward the 2025, 2030, and 2050 goals. This provision further requires the Commission, in issuing regulations to implement the state’s greenhouse gas reduction goals, to “provide for ongoing tracking of emission sources that adversely affect disproportionately impacted communities and are subject to rules implemented pursuant to this subsection (1)(e)” and “include strategies designed to achieve reductions in harmful air pollution affecting those communities.”

Section 25-7-105(1)(e)(V) authorizes, as part of the implementing rules and regulations, 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. The Commission 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. The Commission may also account for carbon dioxide that electricity consumption in this state causes to be emitted elsewhere.

Section 25-7-105(1)(e)(VI) requires the Commission, in carrying out its responsibilities under subsection (1)(e), to consider the benefits of compliance, including health, environmental, and air quality; the costs of compliance; economic and job impacts and opportunities; the time necessary for compliance; the relative contribution of each source or source category to statewide greenhouse gas pollution based on current data updated at reasonable intervals as determined by the Commission; harmonizing emission reporting requirements with existing federal requirements, where the Commission deems appropriate; the importance of striving to equitably distribute the benefits of compliance, opportunities to incentivize renewable energy resources and pollution abatement opportunities in disproportionately impacted communities, opportunities to encourage clean energy in transitioning communities; issues related to the beneficial use of electricity to reduce greenhouse gas emissions; whether program design could enhance the reliability of electric service; the potential to enhance the resilience of Colorado's communities and natural resources to climate impacts; and whether greater or more cost-effective emission reductions are available through program design.

Section 25-7-106, C.R.S., provides the Commission maximum flexibility in developing an effective air quality program and promulgating such a combination of regulations as may be necessary or desirable to carry out that program. §25-7-106(6), C.R.S., further authorizes the Commission to require owners and operators of any air pollution source to monitor, record, and report emission data and other information as the Commission may require.

Section 25-7-140(2)(a)(I), C.R.S., specifically directs the Commission to, by June 1, 2020, "adopt rules requiring [GHG]-emitting entities to monitor and publicly report their emissions as the commission deems appropriate to support Colorado's greenhouse gas emission inventory efforts and to facilitate implementation of rules that will timely achieve Colorado's greenhouse gas emission reduction goals. The commission shall consider what information is already being publicly reported by the federal environmental protection agency and tailor new reporting requirements to fill any gaps in data, as it determines is appropriate, to allow for maintaining and updating state inventories that are sufficiently comprehensive and robust. The rules must include requirements for providers of retail or wholesale electric service in the State of Colorado to track and report emissions from all generation sources within the state and elsewhere that electricity consumption by their customers in this state causes to be emitted. The commission may require emitting entities to report the amount of emissions of each of the seven individual components of greenhouse gases as well as the carbon dioxide equivalent of those emissions."

**<u>Purpose</u>**

The following section sets forth the Commission's purpose in adopting Regulation Number 22, and includes the technological and scientific rationale for the adoption of Regulation Number 22:

*Part A: Greenhouse Gas Reporting*

Revisions to Part A are intended to close a significant gap in GHG reporting that relates to fuel supplied, consumed, and combusted in the state.

*Part C: Colorado Greenhouse Gas Emission Reduction Program*

Part C will establish a cost-effective, economy-wide emissions trading program that will enable Colorado to secure the cumulative GHG reductions consistent with its GHG reduction targets. Through establishing declining statewide annual allowance budgets, requiring that all covered entities hold an allowance for every ton of CO2e they emit, and allocating allowances to certain entities and projects for consignment to auction, the Colorado Greenhouse Gas Emission Reduction Program will put the state on track to meet its important GHG reduction goals.

The program's annual allowance budget is determined by setting a declining, linear reduction trajectory between projected emissions for the start date of the program and the state's 2025 target, and then between 2025 and the 2030 target. This "limit" provides the upper bound for allowable emissions over the duration of the program—ensuring that the cumulative emission reductions over time are consistent with a linear reduction trajectory towards the state's targets. This projected outcome is consistent with the requirements in section 25-7-102(2)(g), C.R.S., that the state achieve its reduction goals by 2025, 2030, and 2050. Climate change results from the cumulative buildup of greenhouse gases in the atmosphere over time, and much of the pollution being emitted today will linger in the atmosphere for decades or even centuries to come. The program design matches the characteristics of the pollutants regulated, and achieves the quantity of cumulative reductions consistent with a persistent trajectory towards the state targets. This emission reduction trajectory will secure significantly more abatement over the upcoming decade than simply keeping pollution levels high and dropping them quickly to meet reduction targets in 2025 and then again in 2030, consistent with the science-based goal of limiting the accumulation of greenhouse gas emissions in the atmosphere.

The statute directs the Commission to consider "whether greater or more cost-effective emission reductions are available through program design." As such, the program provides for the opportunity to "bank" allowances issued in the early years of the program for compliance later on. Banking allowances is a well-known and widely used means of reducing the overall costs of abating pollution by securing low-cost reductions that are available in the near term, while ensuring cumulative reductions consistent with the required reduction trajectory over the life of the program.

The starting budget was developed using a conservative approach to account for emissions from non-covered sectors like oil and gas production facilities. For such sources, the allowance budget accounts for existing Commission regulations, but does not assume further regulations will be adopted. The program provides for adjustments to the budgets in future years if those sectors are reduced through further controls that may be adopted by the Commission. Conversely, if uncovered sectors experience greater than expected emissions growth, the budget can be tightened to ensure the state stays on track. In addition, the program does not preclude the Commission, other agencies, or the legislature, from adopting complementary measures to aid in the achievement of these objectives. This program can serve as a backstop to these complementary measures that ensures the state's emission goals are achieved, consistent with the statute.

As outlined in Section II, the program will cover the emissions of various entities that represent a substantial portion of Colorado's CO2e emissions each year. By reducing the amount these entities collectively emit through the use of a declining budget in Section V, the program will secure the emission reductions that Colorado needs to meet its GHG targets. The budget is based on the covered entities' current emissions and the level of reduction needed to meet Colorado's GHG reduction targets.

Section II covers the applicability of the program to various entities. Facilities that have one or more of the following processes or operations are covered by the program if each facility's emissions meet or exceed, or have met or exceeded, 25,000 metric tons of CO2e per year: cement production, cogeneration, glass production, hydrogen production, iron and steel production, lead production, lime manufacturing, natural gas processing plants, nitric acid production, petroleum refining, pulp and paper manufacturing, self-generation of electricity, and stationary combustion. Electric generators inside the state are covered if their emissions meet or exceed, or have met or exceeded, 25,000 metric tons of CO2e per year and all entities that import electricity to Colorado are covered. The program also covers suppliers of natural gas, RBOB, distillate fuel oil, liquefied petroleum gas, liquefied natural gas, and compressed natural gas who import to, deliver to, own in, or store in Colorado an amount of fuel in a year which, when fully combusted or oxidized, would create 25,000 metric tons or more of CO2e emissions. Carbon dioxide suppliers who supply or use 25,000 metric tons or more of CO2e per year are also covered by the program.

Section IV covers the compliance requirement for covered entities. Covered entities must surrender one compliance instrument for each metric ton of CO2e that the covered entity emits or for which the covered entity is responsible during each compliance period. In addition, in any given year, a covered entity must surrender compliance instruments at least equal to 30 percent of its emissions and emissions for which it is responsible during that year. This annual compliance requirement helps ensure that covered entities are making adequate progress towards meeting the full compliance obligation that will be imposed at the end of each compliance period. The annual compliance requirement will also support market stability by smoothing out the demand for allowances over time. Covered entities do not include oil and gas production facilities which are being addressed by the Commission in other rulemaking efforts and sources exempt per § 25-7-109(8)(a), C.R.S.

Section VI covers the allocation of allowances to covered entities, non-covered entities and projects, and the cost-control account. The program director will allocate allowances for consignment to auction under the program to Colorado retail electricity sellers with clean energy plans, Colorado retail electricity sellers without clean energy plans, natural gas utilities, energy-intensive-trade-exposed entities, a cost-control account, and non-covered entities and projects. Allowances will be allocated to covered entities in order to further statutory purposes and comply with statutory requirements, mitigate consumer costs, and accelerate Colorado's transition to cleaner energy. Allowances allocated to the cost-control account will be available for sale at auction if the settlement price is above certain thresholds, which will provide greater market stability by smoothing allowance price fluctuations. Allowances allocated to non-covered entities and projects will further statutory purposes of the program by enabling greater emission reductions, reducing the economic impact of the program, creating clean energy jobs and investment opportunities, benefiting communities that are disproportionately impacted by harmful pollution, and providing assistance to communities transitioning away from fossil fuels.

Section XII also establishes a Colorado Climate Board, which will advise the program director regarding allocations to non-covered entities and projects. The board will consist of voting members from diverse stakeholder groups and provide the program director with input on allowance allocations to eligible projects.

Section VII covers the procedure for holding allowance auctions. Auctions will be held once in each quarter, with the auction administrator providing public notice at least 60 days before the auction. All allocated allowances must be consigned to auction and only allowances sold at auction can be used for compliance. The program allows for both covered entities and other market participants to register and participate in auctions. Once allowances are sold at auction, Section VIII allows entities to buy, sell, and transfer the allowances among themselves as well as hold them for compliance or sale in future years. This flexibility to "bank" allowances will encourage entities to secure early and low-cost emission reductions. Under Section VII.K, allowances will not be sold at auction below a specified reserve price, which will ensure a stable value for emission reductions and thereby support the development and deployment of emission reduction systems. Section VII.J limits the amount of allowances any single entity may purchase and restricts purchases by one entity on behalf of another entity. These measures help ensure the market for allowances operates efficiently and protect the integrity of the program by preventing one or a small number of entities from manipulating the market by controlling allowance supply and selling allowances needed for compliance at an inflated price.

Under Section VII.L, the entity allocated an allowance sold at auction will receive the proceeds from its sale. Section VII.B.1.a. requires that proceeds from the sale of allowances allocated to the cost-control account will be divided proportionately between utilities with clean energy plans and non-covered entities allocated allowances, based on the number of allowances each entity sold at the respective auction. In addition, under Section VI.B.2, if certain allowances remain unsold after 24 months, these allowances will be allocated to the cost-control account. If such allowances are sold in future auctions, Section VI.B.2.b requires that the entities originally allocated the allowances will receive the proceeds from their sale. Section VI.B.2.b also requires that, if an entity is no longer able to receive the proceeds, the proceeds will be distributed proportionately to non-covered entities selling allowances in the auction in which the cost-control account allowances are sold, based on the number of allowances sold by each non-covered entity in that auction.

Section VI.C.2.a. requires that the program allocate emission allowances to projects that provide for the monitoring of stationary sources of non-GHG pollutants that adversely affect disproportionately impacted communities through localized emissions of harmful air pollution. Section IV.F. further imposes GHG - reduction requirements on facilities that either violate an air quality standard and adversely affect a disproportionately impacted community through localized emissions of harmful air pollution, or that contribute to unacceptable adverse cumulative air pollution impacts on a disproportionately impacted community. In addition, under Section IV.G., a facility that violates an air quality standard or adversely affects a disproportionately impacted community through localized emissions of harmful air pollution is prohibited from using offset credits to meet its compliance obligations under the program.

Identifying disproportionately impacted communities and assessing the harms that they experience will be a complex process involving not only the Commission's expertise and fact-finding abilities, but also input from communities themselves. The Commission and Division are currently engaged in a separate process to provide a framework to provide further guidance on and bolster the engagement of disproportionately impacted communities.

Section IX of the program allows for the creation of offset credits which can be used for compliance by covered entities. An offset program creates an incentive for the development of projects that secure cost-effective emission reductions outside the covered sectors of the program. Under Section IX.A.1., these reductions must be real, additional, quantifiable, permanent, verifiable, and enforceable in order to ensure the integrity of the program's GHG emission reductions. Incorporating offset credits will enhance the program's compliance flexibility and cost-effectiveness while also encouraging emission reductions outside covered sectors. The offsets are required to be located in the State of Colorado to help achieve local air quality goals.

Section XI of the program allows for linking with similar programs in other jurisdictions as long as the Commission determines that the linkage does not compromise the environmental integrity of the program. Because GHG emissions are well mixed in the atmosphere, reductions in other jurisdictions will have essentially the same beneficial impact on atmospheric climate forcing as reductions in Colorado. Linking with other programs would help improve the compliance flexibility and cost-effectiveness of Colorado's program by enlarging the compliance instrument market and allowing entities to access lower-cost emission reduction opportunities for compliance purposes.

Under Section X, violations of the program's requirements, including failing to surrender sufficient compliance instruments to meet an entity's compliance obligation during a compliance period, will result in penalties. Under Section X.A., each ton of excess emissions that is not covered by surrendered compliance instruments will be a separate violation and subject to daily penalties until the violation is corrected. These penalties will create a strong incentive for entities to comply with the program's requirements and render the state's emission reduction targets enforceable, as is statutorily required.

**Additional Considerations**

The following are additional findings of the Commission made in accordance with the Act:

*Section 25-7-110.5(5)(b), C.R.S.*

As these revisions exceed and may differ from the federal rules under the federal act, in accordance with § 25-7-110.5(5)(b), C.R.S., the Commission determines:

*(I) Any federal requirements that are applicable to this situation with a commentary on those requirements;*

Revisions to Part A: In order to create a nationwide inventory of GHG emissions, 40 CFR Part 98 (Part 98) sets forth the federal GHG reporting requirements for qualifying source categories in accordance with the Federal Clean Air Act. The Subparts to Part 98 establish the reporting protocols and methodologies for each source category. 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 $CO_2e$ in combined emissions from stationary sources); and fuel suppliers and fuel importers that import or export product equivalent to 25,000 metric tons of $CO_2e$ or more. Through Part A, as revised, the Commission builds upon established federal reporting requirements and closes additional reporting gaps by eliminating reporting thresholds for certain sources and expanding certain other source categories to report GHG emissions in order to establish a more robust and accurate GHG inventory for Colorado.

Part C: There are no federal regulations applicable to provisions of Part C and Part C does not conflict with any applicable current federal regulations.

*(II) Whether the applicable federal requirements are performance-based or technology-based and whether there is any flexibility in those requirements, and if not, why not;*

Part A: There are no control requirements associated with the Part A GHG reporting rule, as revised.

Part C: Not applicable. There are no applicable federal requirements for the Part C Colorado GHG Emissions Reduction Program.

*(III) Whether the applicable federal requirements specifically address the issues that are of concern to Colorado and whether data or information that would reasonably reflect Colorado's concern and situation was considered in the federal process that established the federal requirements;*

Part A: Colorado's General Assembly has determined that climate change adversely affects Colorado's economy, air quality and public health, ecosystems, natural resources, and quality of life and that reducing statewide GHG emissions can mitigate these impacts. § 25-7-102, C.R.S. While the EPA also indicated that its "mandatory GHG reporting program [set forth in Part 98] will provide EPA, other government agencies, and outside stakeholders with economy-wide data on facility-level (and in some cases corporate-level) GHG emissions," Section 25-7-140, C.R.S. explicitly requires the Commission to adopt GHG reporting requirements to fill any gaps in the federal reporting requirements. To the extent that reporting under 40 CFR Part 98 establishes adequate GHG reporting to satisfy this legislative directive, those requirements and reporting protocols have been adopted. To the extent that the Commission has determined certain source categories may be underreporting due to reporting thresholds or exemptions of certain source categories, those thresholds or exemptions have been eliminated.

Additionally, Part A establishes new reporting requirements for certain source categories for which there are no federal reporting requirements.

Part C: There are no federal regulations applicable to provisions of Part C and Part C does not conflict with any applicable current federal regulations.

*(IV) Whether the proposed requirement will improve the ability of the regulated community to comply in a more cost-effective way by clarifying confusing or potentially conflicting requirements (within or cross-media), increasing certainty, or preventing or reducing the need for costly retrofit to meet more stringent requirements later;*

Part A: Part A, as amended, will continue to maintain reporting requirements for facilities already required to report under Part 98 and will require additional facilities to report under reporting protocols either set forth in Part 98 and related subparts or under state reporting requirements already in place. By adopting existing protocols and reporting procedures, Part A minimizes inefficiencies while still accomplishing the legislative mandate set forth in Section 25-7-140, C.R.S.

Part C: The Colorado GHG Emission Reduction Program will ensure that the regulated community can achieve required GHG emissions reductions in cost-effective ways by permitting covered entities options to directly reduce emissions, obtain allowances, or seek GHG emissions offsets. There are no applicable federal regulations applicable to the provisions of Part C, and accordingly there are no potentially conflicting federal requirements.

*(V) Whether there is a timing issue which might justify changing the time frame for implementation of federal requirements;*

Part A: The March 31 annual reporting deadline is the same under Regulation 22 and Part 98 for all reporters, including new sources covered by the new amendments to Part A. Regulation 22, as amended, does not affect federal GHG reporting requirements for those sources subject to federal reporting requirements. With respect to any sources required to report under Regulation 22 but not under federal requirements, there is no timing issue related to implementation of any federal requirements. Owners and operators of facilities or entities wishing to receive allowances for calendar year 2020 under the provisions of Part C of Regulation 22 have until July 1, 2021 to report GHG emissions.

Part C: There are no applicable federal regulations applicable to provisions of Part C and accordingly there are no applicable time frames for implementation of federal requirements.

*(VI) Whether the proposed requirement will assist in establishing and maintaining a reasonable margin for accommodation of uncertainty and future growth;*

Part A: Regulation 22, Part A's annual GHG reporting requirements, including as amended for fuel suppliers and importers, are retrospective in that they are a report of past emissions and therefore are not subject to uncertainty and do not hinder or negatively affect future growth of facilities required to report past emissions.

Part C: Part C allows a reasonable time for affected entities to comply with the new Colorado Greenhouse Gas Emission Reduction Program. As such, affected businesses or industrial sectors are afforded a reasonable margin for accommodation of uncertainty and future growth. The nature of the program, which is inherently flexible as it allows entities to meet requirements through the purchase and banking of allowances and offsets, and the free allocation of allowances to certain entities, will also facilitate a reasonable margin for accommodation of uncertainty and future growth.

*(VII) Whether the proposed requirement establishes or maintains reasonable equity in the requirements for various sources;*

Part A: With respect to any sources already required to report GHG emissions under the federal reporting requirements, Regulation 22, Part A, maintains reasonable equity as reporting requirements are the same for each source type, including for fuel suppliers and importers covered by the amendments to Part A. With respect to any sources newly required to report GHG emissions under Regulation 22, Part A, the rule establishes reasonable equity as reporting requirements are the same for each source type.

Part C: Part C establishes reasonable equity as allowance requirements and compliance obligations are the same for each category of covered entity.

*(VIII) Whether others would face increased costs if a more stringent rule is not enacted;*

Part A: It is not anticipated there would be increased direct costs to others if a more stringent rule is not enacted.

Part C: As noted above, the legislature has acknowledged that climate change impacts Colorado's economy and directed that GHG emissions should be reduced across the many sectors of our economy. Colorado has established specific GHG reduction goal, and Part C provides a program to cost-effectively meet those goals. A more stringent regulatory approach, such as by setting a lower greenhouse gas limit (and therefore a smaller allowance budget) than is required by statute, could achieve additional GHG reductions. On the other hand, if the program is less stringent, reductions not achieved in one sector will require measures in other sectors of the economy to achieve the state's GHG reduction goals. The Colorado Greenhouse Gas Emission Reduction Program provided in Part C is drafted to most cost-effectively achieve the state's GHG reduction goals by providing regulatory flexibility to covered entities and mechanisms to achieve GHG reductions across numerous sectors of Colorado's economy.

*(IX) Whether the proposed requirement includes procedural, reporting, or monitoring requirements that are different from applicable federal requirements and, if so, why and what the "compelling reason" is for different procedural, reporting, or monitoring requirements;*

Part A: Reporting requirements beyond those required under federal Part 98, including for fuel suppliers and importers, are necessary to effectively quantify and measure Colorado's progress toward statewide GHG reductions and to achieve the public health, safety and welfare goals set forth in § 25-7-102, C.R.S.

Filling gaps in emission data from those select sources not otherwise required to report under Part 98 in order to more accurately determine statewide GHG emissions and develop reduction strategies is a compelling reason to expand the reporting requirements. Additionally, under Part A, Section IV.C., electric service providers and electric utilities will be required to submit supplemental data necessary to verify GHG emissions attributable to imported and exported electricity and to verify plans submitted to the Public Utilities Commission. Under this requirement, owners and operators of these sources will be required to compile and report directly to the Division information collected by or available to them for business or other regulatory purposes. While this may overlap with some other federal reporting requirements, it is expected there will be reporting beyond what is required federally.

Part C: There are no federal regulations applicable to provisions of Part C.

*(X) Whether demonstrated technology is available to comply with the proposed requirement;*

Part A: Part A, as amended, continues to maintain reporting requirements for facilities already required to report under Part 98 and will require additional facilities to report under reporting protocols either set forth in Part 98 and related subparts or under state reporting requirements already in place (i.e. oil and gas operations).

Demonstrated technology exists to enable compliance with the reporting requirements of Regulation 22.

Part C: Each category of covered entity under Part C has significant regulatory flexibility to meet the GHG emissions reduction obligations through technological changes, operational changes, or market purchases. Compliance with the program requirements does not depend upon any technology that is not demonstrated or available.

*(XI) Whether the proposed requirement will contribute to the prevention of pollution or address a potential problem and represent a more cost-effective environmental gain;*

Part A: Revisions to Part A will allow the Commission to strengthen the GHG inventory to enable and inform implementation strategies to cost-effectively reduce statewide GHG emissions to meet the legislative directive of Section 25-7-102(2)(g), C.R.S.

Part C: As noted above, the General Assembly has acknowledged that climate change impacts Colorado's economy and directed that GHG emissions should be reduced across the many sectors of our economy. Colorado has established specific GHG reduction goals. The Colorado Greenhouse Gas Emission Reduction Program in Part C establishes mechanisms for GHG reductions to occur cost-effectively across numerous sectors of the state's economy.

*(XII) Whether an alternative rule, including a no-action alternative, would address the required standard.*

Part A: As initially enacted, Part A had a significant gap in reporting requirements for entities in the fuel supply sector. The amendments are needed to create a complete reporting scheme as required by Section 25-7-140, C.R.S. The amended reporting requirements are appropriate to more fully establish statewide progress towards the GHG emission reduction goals mandated by the General Assembly in Section 25-7-102, C.R.S.

Part C: As noted above, Sections 25-7-105(1)(e) and -140(2)(a)(III),, C.R.S., require the Commission to implement GHG emission reduction strategies in order to secure reductions in pollution consistent with the statewide GHG emission reduction goals set forth in § 25-7-102(g), C.R.S. Currently emissions projections over the next decade demonstrate that a no-action alternative would fall far short of achieving our reduction goals. Additionally, no combination of sector-specific regulations have been identified that are sufficient to meet the state's GHG emissions reductions goals. The economy-wide Colorado Greenhouse Gas Emission Reduction Program is required to accomplish the goals.

*Section 25-7-110.8, C.R.S.*

To the extent that the § 25-7-110.8, C.R.S., requirements apply to this rulemaking, and after considering all the information in the record, the Commission hereby makes the determination that:

(a) These rules are based on reasonably available, validated, reviewed, and sound scientific methodologies and all validated, reviewed, and sound scientific methodologies and information made available by interested parties has been considered.

(b) Evidence in the record supports the finding that the rule shall result in a demonstrable reduction in emission of GHGs consistent with the statutory requirements and will enable the Commission to establish sufficiently comprehensive and robust inventories of GHGs as required by § 25-7-140, C.R.S.

(c) Evidence in the record supports the finding that the rule shall bring about reductions in risks to human health and the environment that will justify the costs to government, the regulated community, and to the public to implement and comply with the rule.

(d) The rules are the most cost-effective to achieve the necessary and desired results and reduction in air pollution.

(e) The rule will maximize the air quality benefits of regulation in the most cost-effective manner.

*Section 25-7-105(1)(e), C.R.S. - Statewide GHG Pollution Abatement*

To the extent that the § 25-7-105(1)(e), C.R.S., requirements apply to this rulemaking, and after considering all the information in the record, the Commission hereby makes the determination that:

*Any impacts to disproportionately impacted communities and (IV) Coordination with other state agencies, stakeholders, and the public:*

The Commission carefully considered the concerns of and potential impacts on communities disproportionately impacted by climate change in the following ways:

Stakeholder engagement: **[To discuss with the Division]**

[*Describe additional stakeholder engagement and economic analysis relating to the proposed amendments to Part A and new Part C and with PUC*]

*Coordination with other jurisdictions:*

There are no current federal regulations applicable to the program provided in Part C. The program in Part C is designed to be linkable to similar programs that provide a cap on total emissions and allow regulated sources to trade emissions allowances in other states or regions, provided such programs are sufficiently rigorous to ensure the integrity of the emission reductions to the atmosphere. See Part C, section XI.

*Additional Considerations:*

Having considered all relevant information in the record and those factors set forth in § 25-7- 105(1)(e)(VI), C.R.S., the Commission has determined that revisions to Part A are appropriate measures necessary to implement statewide GHG pollution abatement. The Commission concludes that the revised GHG reporting requirements in Part A will either directly result in health, environmental, and air quality benefits or otherwise enable the Commission and General Assembly to better regulate GHG emissions in the future through a more robust inventory. The costs of compliance with Part A, as revised, and any negative impacts to Colorado's jobs and economy are considerably outweighed by these benefits. Revisions to Part A will enable the Commission to better inventory statewide GHG emission sources across diverse sectors and sources by utilizing existing federal reporting requirements in 40 CFR Part 98 and also expanding those requirements. Revisions to Part A are therefore determined to be appropriate and cost-effective.

Part C contains a program that is necessary to achieve statutory statewide GHG reduction targets. Based on the [Initial] Economic Impact Analysis, the costs of compliance with Part C are considerably outweighed by the GHG reduction benefits and economic benefits provided by the Colorado Greenhouse Gas Emission Reduction Program. Part C is anticipated to result in cumulative statewide GHG reductions in Colorado of approximately 215 million metric tons $CO_2e$ between 2022 and 2030. Net annual statewide GHG emissions are estimated to fall from 103.7 million metric tons $CO_2e$ in 2030 under business-as-usual projections to 80.1 million metric ton $CO_2e$, securing 23.6 million metric tons $CO_2e$ of reductions in 2030.The policy is anticipated to result in roughly 22 million metric tons $CO_2e$ of reductions in 2025. These reductions are consistent with the reduction trajectory required by the statutory goals. As noted above, the General Assembly has determined that reducing GHG emissions will result in economic and jobs growth by creating new markets, spurring innovation, and driving investments in low-carbon technologies. The time necessary for compliance under Part C reflects consideration of existing state and federal requirements [as well as feedback from stakeholders]. Part C will enable the Commission to oversee GHG emissions reductions required by state law in a manner that is feasible, appropriate, and cost-effective.