

- IV.C.2. The permit applicant shall include in its application proposed replicable procedures and permit terms that ensure the emissions trades are quantifiable;
- IV.C.3. Any emissions units for which emissions are not quantifiable or for which there are no replicable procedures to enforce the emissions trades shall not be included in this provision allowing emissions trading without permit revision;
- IV.C.4. The source shall comply with all other applicable requirements.
- IV.C.5. The source shall provide a minimum of seven days written notification in advance of the proposed changes to the Division and to the Administrator. The notice must be received by the Division no later than seven days in advance of the proposed changes. The source and the Division shall attach each such notice to their copy of the relevant permit. The notice shall contain:
- IV.C.5.a. When the change will occur;
- IV.C.5.b. A description of the changes in emissions that will result and how these increases and decreases in emissions will comply with the terms and conditions of the permit;
- IV.C.5.c. The permit shield shall extend to all operating permit terms and conditions that allow such increases and decreases in emissions.
- IV.C.6. A source shall be allowed to make such change proposed in its notice on the day following the last day of the advance notice described in Section IV.C.5. above, if the Division has not responded nor objected to such changes on or before that day.

V. Certification And Trading Of Emission Reduction Credits Offset And Netting Transactions

V.A. Purpose

This section establishes procedures for the recording of certified emissions reductions and for their use in emission credit transactions. These procedures are intended to:

- V.A.1. Promote economic development and lower the cost of meeting pollution control requirements while assuring ambient air quality progress and continued air quality maintenance; and
- V.A.2. Encourage development of innovative pollution control methods and technologies.

V.B. Scope

This section applies to any pollutant regulated under the Colorado Air Quality Control Act or the regulations promulgated there under in all attainment, attainment/maintenance, and nonattainment areas of the state. This section does not apply to emissions trading under permit caps in Section IV.C. of Part A.

V.C. Definitions

- V.C.1. Alternative compliance methods means the use of emissions reductions credits to meet emissions control requirements in lieu of an applicable control technique guidance method or reasonably available control technology.

- V.C.2. Bubble lets existing sources (or groups of sources) increase emissions at one operation in exchange for compensating extra decreases in emissions at another operation. The net result must be equivalent to or better than would have been accomplished using conventional source specific controls.
- V.C.3. Certified emissions reduction means a reduction in emissions below the baseline, that has been certified by the Division in accordance with the criteria of Section V.E., and that may then be used in an emission credit transaction.
- V.C.4. Criteria pollutant means an air pollutant for which a National Ambient Air Quality Standard has been promulgated.
- V.C.5. Emission credit transaction means the use of certified emission reduction credits in a bubble, netting or offset transaction or as an alternative compliance method.
- V.C.6. Major stationary source means major stationary source as defined in Section II.A.25. of Part D of this regulation.
- V.C.7. Net emissions increase means net emissions increase as defined in Section II.A.27. of Part D of this regulation.
- V.C.8. Netting is designed to exempt modifications of existing major stationary sources from new source review requirements if the resultant impact does not exceed any of the significant values found in the definition of significant in Section II.A.44. of Part D of this regulation.
- V.C.9. Non-inventoried source means any source that has not been recorded on the Division's emission inventory system.
- V.C.10. Offset means a transaction in which a certified emissions reduction is used either to avoid causing a violation of an increment in an attainment or attainment/maintenance area, to meet the requirements of Section V.A.3. of Part D of this regulation, regarding the maintenance of reasonable further progress towards attainment of the National Ambient Air Quality Standards in nonattainment areas, or to avoid contributing to visibility or other air quality related values impairment in a Class I area.
- V.C.11. Registry means the Division's record of the certification and use of emissions reductions.
- V.C.12. Significant means significant as defined in Section II.A.44. of Part D of this regulation.
- V.C.13. Surplus means emission reductions not required by current regulations, relied on for state implementation plan planning purposes, and not used to meet any other regulatory requirement.
- V.C.14. Open Dust means solid or other air borne particulate matter (excluding particulates produced directly during combustion) resulting from natural forces or from surface use or disturbance, including, but not limited to, all dust from agriculture, construction, forestry, unpaved roads, mining, exploration, or similar activities in which earth is either moved, stored, transported or redistributed.
- V.C.15. Baseline emissions are equal to the product of the:
- V.C.15.a. Emission Rate (ER), specified in terms of mass emission per unit of production or throughput (e.g., pounds sulfur dioxide per million British ther-

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mal units or pounds of volatile organic compounds per weight of solids applied);

V.C.15.b. Average hourly capacity utilization (CU) e.g., millions of British thermal units per hour or weight of solids applied per hour; and

V.C.15.c. Number of hours of operation (H) during the relevant time period i.e.,
baseline emissions = ER x CU x H. Net baseline emissions for a bubble are the sum of the baseline emissions of all sources involved in the trade.

V.D. Procedure for Certification of Emissions Reductions and Approval of Transactions

V.D.1. The owner or operator of a source may request the Division to certify any emissions reduction anticipated to occur after the effective date of this section, provided the owner or operator files his application prior to the occurrence of the reduction, at a time at which the source is emitting the baseline emissions of the subject pollutant. Sources that shutdown prior to the application to bank or trade have zero emissions, and therefore no credit is available.

V.D.2. Upon receiving an application for certification, the Division may require the applicant to submit all data and calculations necessary to verify the baseline emissions or the reduction of emissions below the base level including, but not limited to, documentation of operating hours and inputs. The Division may also require the applicant to perform source tests to establish the baseline emissions or the reduction of emissions below the baseline emissions. The Division shall not certify reductions anticipated to occur after the effective date of this regulation until the reductions have occurred and been verified.

V.D.3. The Division shall maintain an emissions reduction registry, in which it shall maintain a record of all certified emissions reductions, and of the use of certified emissions reductions in emission credit transactions. The information contained in such registry shall include the name and address of the owner or operator of the source creating the emissions reduction, the location of the source, its stack parameters, the temperature and velocity of its plume, particle size, the existence of any hazardous pollutants, daily and seasonal emission rates, and any other data that might reasonably be necessary to evaluate future use.

V.D.4. If the Division determines that certification should be granted it shall modify the permit of the applicant to provide that the allowable emissions are equal to the level of current emissions utilized in the calculation of the emissions reduction. The owner or operator of a source not required to obtain a permit by provisions of law other than this section shall be required to apply for and accept a permit as a condition of obtaining a certified emissions reduction. Such permits shall contain only those conditions necessary to ensure the enforcement of the emissions limitations applicable to the source as a result of certification of its emissions reduction.

V.D.5. The amount of the emissions reduction to be certified and entered in the registry shall be calculated as follows:

V.D.5.a. For any emissions reduction that has occurred in an attainment or attainment/maintenance area, the amount of the certified emissions reduction shall be 90 percent of the amount by which emissions have been reduced below the baseline emissions.

- V.D.5.b. For any emissions reduction that has occurred in a nonattainment area, the amount of the certified emission reduction shall be 80 percent of the amount by which emissions have been reduced below the baseline emissions.
- V.D.5.c. For bubbles in nonattainment areas that need, but lack, approved demonstrations of attainment, i.e., areas with unapproved state implementation plans, a greater discount may be taken. This discount will be based on the area's total baseline emissions, the target emissions for attainment, the emissions for the projected attainment year and the reductions needed to achieve attainment. These values are dynamic and so the discount value may change from year to year but will never be less than 20 percent. These transactions will require a state implementation plan revision.
- V.D.6. An application may be filed for approval of the use of a certified emissions reduction in an emissions credit transaction simultaneously with the filing of a certification application, or within seven years after certification has been granted. If the transaction would require the modification of permits held by more than one person, the application shall be jointly submitted by all potentially affected permittees. The Commission shall determine whether to approve all bubble and alternative compliance method transactions, or any offset transactions that, pursuant to Section V.H., require a state implementation plan revision. The Division shall determine whether to approve all netting transactions, or any offset transactions for which no state implementation plan revision is required. The Commission may approve the use of a certified emissions reduction credit as an alternative compliance method in lieu of a specified control technique guidance method or reasonable available control technology.
- V.D.7. Applications for certification of emissions reductions and approval of transactions shall be made on forms provided by the Division. Any source applying for approval of an alternative compliance method transaction shall submit to the Division a construction permit application in accordance with Regulation Number 3, Part B, Section III. for the construction or modification, reflecting the source and proposed use of the emissions credit. The application shall contain information sufficient to demonstrate that the criteria set forth in Section V.F. of this Part A are met as well as the criteria for approval of the state implementation plan revision. The Division shall review the application and prepare its preliminary analysis in accordance with Regulation Number 3, Part B, Section III.B. The source requesting approval for the transaction and the state implementation plan revision should be granted, and shall provide with its petition, a copy of the preliminary analysis of the Division. The Division shall not grant initial approval of any such application until the Commission has approved the transaction, the source has met the conditions placed on the transaction by the Commission, and the requirements of all other applicable regulations are met.
- V.D.8. Where the owner or operator of a source requests a state implementation plan revision pursuant to this Section V., the Commission shall set a hearing on the proposed revision to be held in accordance with the procedures set forth in Colorado Revised Statutes Section 25-7-119. With respect to applications for certification of emissions reductions, or for approval of any netting transactions, or offset transactions within the Division's jurisdiction under Section V.H.2., the same time limitations for emission permits as found in Part B Section III.B. of this regulation shall apply.
- V.D.9. Applicants for certification of an emissions reduction, or for approval of any emission credit transaction, shall be assessed fees for time spent by Division personnel in evaluating such applications in accord with the criteria for assessment of emissions permit fees set forth in Section VI.C. of this Part A. Where more than one person applies for approval of a transaction, all such persons shall be jointly liable for the fees assessed. Applicants shall be responsible for paying such fees regardless of

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whether the Division approves or denies an application. The costs of Division review of any emissions modeling or other information necessary for the Division to formulate recommendations to the Commission regarding any proposed emission credit transaction shall be included in the costs attributed to the permit application for the source(s) seeking approval of the transaction and shall be paid by the source regardless of whether the emission credit transaction is approved.

V.D.10. The state shall not utilize a certified emissions reduction in making demonstrations of attainment, or reasonable further progress toward attainment of the National Ambient Air Quality Standards, within seven years after the date of certification, or at any time after an application for use of the certified emissions reduction in a transaction has been approved. Where no application has been filed for the approval of the use of a certified emissions reduction within seven years after certification was granted, the state shall subsequently utilize the reduction in making demonstrations of attainment, or reasonable further progress towards attainment of the National Ambient Air Quality Standards. This seven-year period shall be tolled during any time in that there is a pending application before the Division or the Commission for approval of a bubble, netting, or offset transaction based on the certified emissions reduction.

V.D.11. Applications for approval of transactions involving PM₁₀ (fine particulates for Prevention of Significant Deterioration increment consumption), sulfur dioxide, carbon monoxide, lead, and oxides of nitrogen (where visibility impacts are of concern), shall be subject to the following ambient air quality modeling requirements:

V.D.11.a. De minimis: In general modeling is not required to determine the ambient equivalence of trades in which applicable net baseline emissions do not increase and in that the sum of the emissions increases, looking only at the increasing sources, 15 tons per year for PM₁₀, 40 tons per year for sulfur dioxide, 100 tons per year for carbon monoxide, 40 tons per year for nitrogen oxide (where visibility impacts are of concern), or 0.6 tons per year for lead, after applicable control requirements. For purposes of Prevention of Significant Deterioration any increase in PM₁₀ should be modeled.

V.D.11.b. Level 1: In general, modeling to determine ambient equivalence is not required if:

V.D.11.b.(i) The trade does not result in an increase in applicable net baseline emissions;

V.D.11.b.(ii) The relevant sources are located in the same immediate vicinity (within 250 meters) of each other;

V.D.11.b.(iii) An increase in baseline emissions does not occur at the source with the lower effective plume height, as determined under the U.S. EPA approved and Division accepted guidelines, as interpreted in the Code of Federal Regulations Title 40, Subpart 52.343.

V.D.11.b.(iv) No complex terrain is within the area of significant impact (see Figure 1) of the trade or 50 kilometers, whichever is less;

V.D.11.b.(v) Stacks with increasing baseline emissions are sufficiently tall to avoid possible downwash situations, as determined by good engineering practice;

V.D.11.b.(vi) The trade does not involve open dust sources.

V.D.11.c. Level II: Bubble trades that are neither De minimis nor Level I may nevertheless be evaluated for approval based on modeling to determine ambient equivalence limited solely to the impacts of the specific emission sources involved in the trade, if:

V.D.11.c.(i) There is no increase in applicable net baseline emissions;

V.D.11.c.(ii) If the potential change in emissions before and after the trade will not cause a significant increase in pollutant concentrations at any receptor for an averaging time specified in an applicable ambient air quality standard; and

V.D.11.c.(iii) Such an analysis does not predict any increase in ambient concentrations in a Class I or Category I area. However, a bubble will not be approved under Level II where evidence clearly indicates the bubble would create a new violation of an ambient standard or Prevention of Significant Deterioration increment or would delay the planned removal of an existing violation. The change in concentration from the before-trade case to the after-trade case must, in general, be modeled using refined models for each appropriate averaging time for the relevant national ambient air quality standards for each receptor, using the most recent full year of meteorological data. Other techniques may be approved where sources show they equally well protect national ambient air quality standards, applicable Prevention of Significant Deterioration increments, and visibility. For example, in limited circumstances conservative screening models may be acceptable in lieu of refined models. In such cases, use of a full year of meteorological data may not be necessary. Such screening models may be acceptable where: (A) the screening model shows that all the emissions from the stack(s) with increasing emissions would not produce exceedances of the Level II significance values; (B) the stack parameters at the stack(s) with increasing emissions do not change; and (C) the screening model shows that the increase in emissions at the increasing stack(s) would not produce exceedances of these significant values.

In determining significant impact for Level II bubble trades, the Division will use the following significance values to identify trades whose potential ambient impact need not be further evaluated before approval:

8-micrograms/cubic meter ($\mu\text{g}/\text{m}^3$) for any twenty-four hour period for PM₁₀;

4-micrograms/cubic meter ($\mu\text{g}/\text{m}^3$) for any annual arithmetic mean for PM₁₀;

13-micrograms/cubic meter ($\mu\text{g}/\text{m}^3$) for any twenty-four hour period for sulfur dioxide;

46-micrograms/cubic meter ($\mu\text{g}/\text{m}^3$) for any three-hour period for sulfur dioxide;

3-micrograms/cubic meter ($\mu\text{g}/\text{m}^3$) for any annual period for sulfur dioxide;

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575-micrograms/cubic meter ($\mu\text{g}/\text{m}^3$) for any eight-hour period for carbon monoxide;

2,300-micrograms/cubic meter ($\mu\text{g}/\text{m}^3$) for any one-hour period for carbon monoxide;

0.1 micrograms/cubic meter ($\mu\text{g}/\text{m}^3$) for any three-month period for lead. Except that:

V.D.11.c.(iii)(A) For offset transactions, significant impact shall be determined by the values found in the table of significant values in Section VI.D.2. of Part D of this regulation.

V.D.11.c.(iii)(B) Only process fugitive emissions vented through stacks may be approved in a Level II analysis.

V.D.11.c.(iii)(C) Trades involving open dust sources may not be approved in a Level II analysis.

V.D.11.c.(iii)(D) Trades involving complex terrain cannot be approved with a Level II analysis.

V.D.11.d. LEVEL III full dispersion modeling considering all sources affecting the trade's area of impact is required to determine ambient equivalence if applicable net baseline emissions will increase as a result of the trade, or if the trade cannot meet criteria for approval under De Minimis, Level I or Level II.

V.D.11.e. Approved Models:

Modeling: Only U.S. EPA-approved models may be used in banking transactions. Use of non-guideline models will be allowed once they have been approved according to the requirements of Section VIII.A.1. of Part A of this regulation.

V.D.12. Following the certification of an emissions reduction, if the Division determines that certification was granted on the basis of fraud or material misstatement or omission, the Division shall revoke certification of the reduction. Certification shall be revoked only after the owners or operators of the affected sources have received notice and, if requested, a hearing has been conducted. In such cases the Division shall also modify the permit of the source that has used the emissions reduction, so that the permit will contain all conditions that would have applied if the emissions reduction had not been certified initially.

V.E. Criteria for Certification of Emissions Reductions

An emissions reduction shall be certified for use in an emission credit transaction, provided it meets the following criteria:

V.E.1. The emissions reduction shall be surplus. Surplus reductions are those below the baseline emissions. The baseline emissions shall be determined as follows:

V.E.1.a. In attainment and attainment/maintenance areas, the baseline emissions shall be a source's actual emissions of the subject pollutant, or allowable emissions whichever is lower, for the three baseline factors. Reasonably Available Control Technology shall be as set forth in the State implementa-

tion plan for the source. Where Reasonably Available Control Technology has not been determined in the state implementation plan for the source, it shall be determined by the Division.

V.E. 1.b. In nonattainment areas for which there is a demonstration of attainment of the National Ambient Air Quality Standards approved by the U.S. EPA the baseline emissions shall be actual emissions, provided, however, the baseline emissions shall not exceed reasonably available control technology as defined in the state implementation plan or the level of emissions used by the state in making a demonstration of attainment.

V.E. 1.c. In nonattainment areas for which there is not a demonstration of attainment of National Ambient Air Quality Standards approved by the U.S. EPA, the baseline emissions shall be the lower of: 1) the actual emissions, 2) allowable emissions under the state implementation plan or 3) allowable emissions if the source is subject to Reasonably Available Control Technology.

V.E. 1.d. Emission rate, capacity utilization and hours of operation must be used to compute pre-trade and post-trade emission levels. Baseline must be established on an annual basis and for all other averaging periods consistent with the relevant National Ambient Air Quality Standards and Prevention of Significant Deterioration increments.

V.E.2. No emissions reduction shall be certified if the Division has relied upon the occurrence of the reduction in demonstrating attainment of the National Ambient Air Quality Standards or reasonable further progress towards attainment, or in establishing a baseline concentration.

V.E.3. Each certified reduction of a pollutant's emissions shall be quantified in the same unit of measurement used in the standard or regulation applicable to the pollutant.

V.E.4. In attainment and attainment/maintenance areas, reductions at major stationary sources that commenced construction after January 1, 1975 may be able to qualify for credit whether such reductions occurred before or after the Prevention of Significant Deterioration baseline triggering date. Other emission reductions (e.g., at minor sources) cannot qualify for credit where the Prevention of Significant Deterioration baseline date is or has been triggered and such reductions occurred prior to the trigger date, unless these reductions are not assumed in the Prevention of Significant Deterioration baselines. Since banked emission reduction credits must be considered to be "In the Air" for all planning purposes, if the baseline date is triggered before banked credits are actually used, such banked credits will be considered as part of the baseline and will not consume increment when used in an emissions trade.

In attainment and attainment/maintenance areas where the Prevention of Significant Deterioration baseline has not been triggered as of the date the permitting authority takes relevant final action on the trading transaction, reductions below current state implementation plan or permit limits generally may be used without special restrictions in bubble or banking transactions, provided they are otherwise creditable and there is assurance that National Ambient Air Quality Standards will not be violated due to any potential increase in actual emissions. However, reductions at sources other than major stationary sources on which construction commenced before January 1, 1975 may not be used to balance increases at such pre 1975 major sources.

V.E.5. Emission reductions achieved by shutting down an existing source or curtailing production or operating hours below baseline levels may be generally credited if such reductions are permanent, quantifiable, and federally enforceable, and if the area has

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an U.S. EPA-approved attainment plan. In addition, the shutdown or curtailment is creditable only if it occurred on or after the date specified for this purpose in the plan, and if such date is on or after the date of the most recent emissions inventory used in the plan's demonstration of attainment. Where the plan does not specify a cutoff date for shutdown credits, the date of the most recent emissions inventory or attainment demonstration, as the case may be, shall apply. However, in no event may credit be given for shutdowns that occurred prior to August 7, 1977. For purposes of this section a permitting authority may choose to consider a prior shutdown or curtailment to have occurred after the date of its most recent emissions inventory, if the inventory explicitly includes as current existing emissions the emissions from such previously shutdown or curtailed sources.

V.E.5.a. Such reductions may be credited in the absence of an approved attainment demonstration only if the shutdown or curtailment occurred on or after the date the new source permit application is filed, or, if the applicant can establish that the proposed new source is a replacement for the shutdown or curtailed source, and the cutoff date provisions of Section A, above, are met.

- V.E.6. No emission reduction credits are allowed from mobile sources unless those sources are subject to ambient impact and new source review permitting.
- V.E.7. Reductions down to compliance levels may not qualify for emission reduction credit.
- V.E.8. If an existing source commits to switch to a cleaner fuel at some future date, emission reduction credit is allowable only if a permit is conditioned to require use of a specified alternative control measure that would achieve the same degree of emission reduction should the source switch back to a dirtier fuel at some later date. The Division will ensure that adequate long-term supplies of the new fuel are available before granting the reduction credit.
- V.E.9. Emission reductions otherwise required by the Federal Act shall not be creditable as emission reductions. Incidental emission reductions that are not otherwise required by the Federal Act are creditable as emission reductions if such emission reductions meet the requirements of Section V. of Part D of this regulation, if applicable and this Section V.
- V.E.10. The total tonnage of increased emissions, in tons per year, resulting from a major modification that must be offset in accordance with Section 173 of the Federal Act shall be determined by summing the difference between the allowable emissions (as defined in Section I.B.7. of this part) after the modification and the actual emissions (as defined in Section II.A.1. of Part D) before the modification for each emissions unit.

V.F. Criteria for Approval of all Transactions

The use of an emissions reduction in an emission credit transaction shall be approved only if it meets the following criteria:

- V.F.1. The transaction shall involve like pollutants. For toxic or volatile organic compound pollutants, the trade should involve the same degrees of toxicity or photochemical reactivity or else a greater reduction may be required. New or modified major sources of a PM10 precursor can only obtain offsets from emissions reductions in that same PM10 precursor or in PM10. New or modified major sources of PM10 can only obtain offsets from emissions reductions in PM10. The offsets must be greater than one

for one and represent a net air quality benefit in the area the source is proposing to locate or modify. (See exception in Section V.H.8.)

- V.F.2. No transaction shall be approved if it will result in an increased concentration, at the point of maximum impact, of hazardous air pollutants.
- V.F.3. Where a significant fraction of a criteria pollutant stream has been listed as hazardous by the Commission under Regulation Number 8 or the U.S. EPA under United States Code, Title 42, Section 7412 but has not yet been regulated, emissions containing that pollutant from sources within two hundred and fifty meters of each other may only be traded against each other on a greater than one for one basis that assures a net decrease in emissions of the hazardous pollutant.
- V.F.4. Hazardous and non-hazardous emissions of the same criteria pollutant may be traded against each other, provided the total emissions containing the hazardous pollutant from the sources involved in the transaction are required to decrease as a result of the transaction.
- V.F.5. No transaction may be approved that is inconsistent with any standard established by the Federal Act, the state Act or the regulations promulgated under either, or to circumvent New Source Performance Standards requirements or Best Available Control Technology although the Commission may approve a transaction using a certified emissions reduction credit in lieu of a specified control technique guidance method or reasonably available control technology.
- V.F.6. No transaction shall be approved unless either:
 - V.F.6.a. The source at which the emissions reduction occurred and the source using the emissions reductions are in the same nonattainment area or Prevention of Significant Deterioration baseline area; or
 - V.F.6.b. The emissions reduction is to be used as an offset to meet the requirements of Section V.A.3. of Part D of this regulation, and the conditions of that section are met for the use of an offset obtained from a source outside the nonattainment area.
- V.F.7. Emission reduction credits may not be used to meet applicable technology based requirements for new sources such as New Source Performance Standards, Best Available Control Technology, or Lowest Achievable Emission Rate, although the Commission may approve a transaction using a certified emissions reduction credit in lieu of a specified control technique guidance method or reasonably available control technology.
- V.F.8. Trades Involving Open Dust: Sources of particulate emissions may be approved through case by case state implementation plan revisions based on modeled demonstrations of ambient equivalence. Sources proposing such trades must commit, as part of the trade's approval, to:
 - V.F.8.a. Undertake a post approval monitoring program to evaluate the impact of their control efforts, and
 - V.F.8.b. Make further enforceable reductions if post trade monitoring indicates initial open dust controls do not produce the predicted air quality results.

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- V.F.9. The federal land manager must be notified if an emissions trade will take place within one hundred kilometers of a Prevention of Significant Deterioration Class I area. Notification must occur early enough in the review process to allow at least thirty days for the submittal of comments before the trade will be approved by the reviewing authority.

Where a bubble within fifty kilometers of a Prevention of Significant Deterioration Class I area is submitted as a case-by-case state implementation plan revision, the Division may call for additional technical support, beyond the applicable requirements of the modeling screen if deemed necessary to protect air quality in the Class I area.

- V.F.10. Effect on Trades of Subsequently-Discovered Clean Air Act Problems: Revisitation Considerations - If ambient violations are discovered in an area where the Division has approved a trade, or if other violations of the act are discovered in that area, sources in the trade should be aware that they are potentially subject to requirements for additional emission reductions, just as are all other sources in the area.
- V.F.11. For volatile organic compound and nitrogen oxide trades, pound for pound trades will be considered equal in ambient effect where all sources involved in the trade are in the same control strategy demonstration area (nonattainment area) or if outside that area are sufficiently close to show an equal effect.
- V.F.12. For volatile organic compound trades involving surface coating, the emissions must be calculated on a solids applied basis and should specify the maximum time period over which the emissions may be averaged, not to exceed twenty-four hours.
- V.F.13. The following trades require a state implementation plan revision:
- V.F.13.a. PM10, sulfur dioxide, carbon monoxide or lead trades requiring full-scale dispersion modeling under Level III;
 - V.F.13.b. PM10, sulfur dioxide, carbon monoxide or lead trades where complex terrain is within the area of the source's significant impact or fifty kilometers, whichever is less, unless the trade does not result in a modification of effective stack heights and the trade otherwise qualifies as De minimis or Level I. The area of significant impact can be determined from Figure 1;
 - V.F.13.c. Open Dust Trades;
 - V.F.13.d. Level II trades involving process fugitive PM10, sulfur dioxide, carbon monoxide or lead emissions not discharged through stacks;
 - V.F.13.e. Trades involving Emission Reduction Credits from mobile sources (see Section V.E.7.);
 - V.F.13.f. Trades involving sources that are subject of a notice of violation (NOV), noncompliance penalty action or the filing of a judicial complaint;
 - V.F.13.g. Interstate trades;
 - V.F.13.h. Volatile organic compound trades with averaging times longer than twenty-four hours;
 - V.F.13.i. Trades involving work practice and equipment standards;

V.F.13.j. Trades involving negotiated Reasonably Available Control Technology baselines;

V.F.13.k. Trades affecting areas that need but lack approved demonstrations of attainment.

V.F.13.l. Emission credit transactions used as an alternative compliance method.

V.F.14. No emission credit transaction shall be approved unless the terms of the transaction are incorporated in permits applicable to the originating (as applicable) and receiving emissions sources.

V.F.15. Emission credit transactions that require a state implementation plan revision shall be considered by the Commission on a case-by-case basis. The source requesting approval of the transaction has the burden of demonstrating that all the criteria of this Section V.F., are met and of demonstrating that all applicable requirements for approval of the state implementation plan revision has been met.

V.G. Bubble Transactions

V.G.1. An owner or operator of an existing source may apply to the Commission for approval of a state implementation plan revision establishing a bubble. The bubble shall establish new emissions limitations for two or more facilities or operations within the source.

V.G.2. The Commission shall not approve a bubble unless it meets the criteria for approval of Section V.F., and the Division has first certified an emissions reduction at a facility or operation included in the bubble.

V.G.3. As part of the certification process, the amount of allowable emissions shall be reduced at the facility or operation where the emissions reduction has occurred in accord with Section V.D.5. As part of the bubble approval, the Commission may approve an increase in the total allowable emissions at the other facilities or operations covered by the bubble, by an amount not to exceed the amount of the subject certified emissions reduction.

V.G.4. As part of the bubble approval, the Commission may extend compliance deadlines otherwise required by Commission regulations for volatile organic compounds or carbon monoxide emissions, provided the following criteria are met:

V.G.4.a. The applicant must demonstrate to the satisfaction of the Commission that reasonable further progress toward the attainment of the National Ambient Air Quality Standards under the state implementation plan shall be maintained either by:

V.G.4.a.(i) Achievement of emissions reductions earlier than otherwise required by certain facilities or operations covered by the bubble; or

V.G.4.a.(ii) Temporary use of a certified emissions reduction to assure reasonable further progress toward attainment of the National Ambient Air Quality Standards.

V.G.5. If subsequent to the approval of a bubble, the Commission promulgates new regulations or amends existing regulations applicable to a source for which the bubble was

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been approved, the source shall be required to meet the new or amended regulations, irrespective of the bubble, by either further reducing emissions or using certified emissions reductions as offsets.

- V.G.6. Bubble applications in areas that require but lack approved demonstrations of attainment, i.e., non approved state implementation plans, must be accompanied by assurances of consistency with ambient progress and air quality planning goals specified below:
- V.G.6.a. The resulting emission limits comply with the reduction requirements of Section V.D.5.c., and the baseline requirements of Section V.E.;
- V.G.6.b. The bubble emission limits will be included in any new state implementation plan and associated control strategy demonstration;
- V.G.6.c. The bubble will not constrain the Division's ability to obtain any additional emission reductions needed to expeditiously attain and maintain ambient air quality standards;
- V.G.6.d. The Division is making reasonable efforts to develop a complete approvable state implementation plan and intends to adhere to the schedule for such development (including dates for completion of emission inventory and subsequent increments of progress) stated in or with the letter formally submitting the bubble.
- V.G.7. Bubbles should not increase applicable net baseline emissions. Ordinarily, bubbles may not result in an increase in applicable net baseline emissions. Such a bubble would require a case-by-case state implementation plan revision, and may only be approved based upon a combined Level III and Level II modeling analysis (i.e., an analysis sufficient to show that all applicable requirements of a full Level III analysis are met, and that the bubble would not result in any exceedance of significance values specified for a Level II analysis at any receptor for any averaging time specified in an applicable ambient air quality standard).
- V.G.8. Bubbles should not increase emissions of hazardous or toxic air pollutants.
- V.H. Offset Transactions
- V.H.1. The owner or operator of a source at which an emissions reduction has occurred, and the owner or operator of another source who wishes to use the emissions reduction as an offset, may apply for approval of an offset transaction. In such transactions certified emissions reductions may be applied to avoid causing a violation of an increment in an attainment or attainment/maintenance area, or to meet the requirements of Section V.A.3. of Part D of this regulation. A certified emissions reduction may not be used as an offset for the purpose of complying with an existing applicable emissions control regulation, except for Reasonably Available Control Technology.
- V.H.2. The Division shall determine whether to approve an offset transaction in the following cases:
- V.H.2.a. Where the source using the emissions reduction would be allowed to increase emissions by less than one hundred tons per year.
- V.H.2.b. Where the transaction involves volatile organic compounds or oxides of nitrogen emissions.

- V.H.2.c. Where the transaction involves sulfur dioxide, PM10 or carbon monoxide emissions, and all sources involved in the transaction are within two hundred and fifty meters of one another.
- V.H.3. Any proposed offset transaction, other than those referred to in Section V.H.2., shall be treated as a request to the Commission for a state implementation plan revision.
- V.H.4. Sources of PM10 precursors, sulfur dioxide, nitrogen oxide and carbon monoxide must seek offsets within reasonably close proximity. Sources of nitrogen oxide and volatile organic compounds may seek offsets over a greater area. However, for widely dispersed and volatile organic compound trades, a higher offset may be required.
- V.H.5. If the applicant has used his best efforts in seeking the required emission offsets but was unsuccessful, the source may petition for use of some portion of growth allowance. The petition must state the emission increase will not interfere with Reasonably Further Progress and the petitioner is willing to enter into an enforceable program to provide the required emission offset at some future time.
- V.H.6. In the absence of an approved attainment demonstration, banked Emission Reduction Credits from shutdowns or curtailments may be used for offsets only if the criteria stated in Section V.E.5.b. of Part A of this regulation are met.
- V.H.7. In nonattainment areas with approved demonstrations, banked Emission Reduction Credits may be used for offsets in any trade provided the criteria stated in Section V.E.5.a. of Part A of this Regulation are met.
- V.H.8. Interpollutant offsets (other than those offsets discussed above) may be approved by U.S. EPA on a case-by-case basis provided that the applicant demonstrates, on the basis of U.S. EPA-approved methods where possible, that the emissions increases from the new or modified source will not cause or contribute to a violation of an ambient air quality standard. A source's permit application that includes such an interpollutant offset proposal shall not be approved by the Division until there has been an opportunity for public hearing on the proposed emissions trade and until written approval has been received from the U.S. EPA.
- V.I. Netting Transactions
- V.I.1. Netting may exempt modifications of existing major sources from certain pre-construction permit requirements under new source review, so long as there is no significant net emission increase, as net emissions increase is defined in Section II.A.27. of Part D of this regulation. By netting out, the modifications is not considered major and therefore not subject to pre-construction permit requirements for major modifications as follows:
- V.I.1.a. Section VI. of Part D of this regulation, for prevention of significant deterioration;
- V.I.1.b. Visibility analysis; and
- V.I.1.c. Section V.A. of Part D of this regulation, for nonattainment new source review.
- V.I.2. The Division shall grant such an exemption if the emissions reduction ^{Or qualifies as an} Emission Reduction Credit under Regulation Number 5 meets the criteria in Section

V.E., for certification, and the difference between the amount of the certified emissions reduction, and the amount of new pollutants to be emitted from the new or modified facility, does not constitute a significant increase of pollutants.

- V.I.3. An increase of pollutants shall be considered significant if it equals or exceeds the amounts specified in the definition of significant in Part D of this regulation.

VI. Fees

VI.A. General

- VI.A.1. Every person required to obtain a Construction or Operating Permit or to file an Air Pollution Emission Notice shall pay fees as set forth in the following sections. Such fees shall be charged to recover the direct and indirect costs incurred by the Division in processing permit applications, issuing permits, and in conducting a compliance monitoring and enforcement program. Such fees shall apply without regard to whether a permit is issued, denied, withdrawn, or revoked. Fees shall be charged as indicated in Section VI.D. of this part.

VI.B. Permit Processing Fees

- VI.B.1. Applicants for a permit shall be assessed total fees that shall be partially determined at the time that the Division makes its decision whether to issue preliminary approval of the permit and partially at the time the Division makes its decision whether to issue final approval.
- VI.B.2. The partial fee collected at the time the Division makes its decision whether to issue preliminary approval of the permit shall include the costs associated with the preliminary engineering evaluation, modeling, and analysis of impact on ambient air quality, notice and publication requirements, and such other costs as are required for the aforementioned activities incurred by the Division up to the time of the decision of whether to issue preliminary approval.
- VI.B.3. The final fee collected at the time the Division makes its decision of whether to issue final approval shall include the balance of the total of all costs associated with enforcement of any terms and conditions of the emission permit, the supervision of compliance testing, notice and publication requirements, and such other costs as are required for the processing, issuance, and administration of the permit.
- VI.B.4. If the Division requires more than thirty hours to process an application, the Division shall inform the owner or operator of the source and provide an estimate of what the actual charges may be, prior to commencing with processing of the application, unless the owner or operator waives this requirement in writing.
- VI.B.5. All permit processing fees assessed must be received within thirty days of the date of receipt of the written request therefore. All fees collected under this regulation shall be made payable to the Colorado Department of Public Health and Environment. Construction permits shall not be issued until all such assessed fees have been paid. Permits issued in accordance with Part C of this regulation may be issued upon approval by the Division of a fee payment schedule.

VI.C. Annual Emissions Fees

- VI.C.1. As used in this Section VI., in accordance with Colorado Revised Statute Section 25-7-114.7, regulated air pollutant means: