

ARTICLE 7

AIR QUALITY CONTROL

Editor's note: This article was numbered as article 31 of chapter 66, C.R.S. 1963. The substantive provisions of this article were repealed and reenacted in 1979, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1979, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

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PART 1

AIR QUALITY CONTROL PROGRAM

Cross references: For the automobile inspection and readjustment program, see [42-4-301](#) to 42-4-316.

Law reviews: For article, "A Practitioners Guide to the Colorado Air Quality Control Commission", see 16 Colo. Law. 1405 (1987); for article, "Colorado's New Clean Air Program", see 22 Colo. Law. 541 (1993); for article, "Colorado's Clean Air Act Amendments Regulations", see 23 Colo. Law. 861 (1994).

25-7-101. Short title.

This article shall be known and may be cited as the "Colorado Air Pollution Prevention and Control Act".

Source: **L. 79:** Entire article R&RE, p. 1017, 1. **L. 92:** Entire section amended, p. 1165, 3, effective July 1.

ANNOTATION

Law reviews. For article, "1974 Land Use Legislation in Colorado", see 51 Den. L.J. 467 (1974). For comment, "Environmental Law -- Requirement of Notice in Visual Opacity Readings -- Air Pollution Variance Bd. v. Western Alfalfa Corp., 94 S. Ct. 2114 (1974)", see 51 Den. L.J. 603 (1974). For comment, "Pre-Enforcement Judicial Review: CF & I Steel Corp. v. Colorado Air Pollution Control Commission", see 58 Den. L.J. 693 (1981). For article, "Pollution or Resources Out-of-place: Reclaiming Municipal Wastewater for Agricultural Use", see 53 U. Colo. L. Rev. 559 (1982).

Applied in *CF&I Steel Corp. v. Colo. Air Pollution Control Comm'n*, [199 Colo. 270, 610 P.2d 85](#) (1980).

25-7-102. Legislative declaration.

In order to foster the health, welfare, convenience, and comfort of the inhabitants of the state of Colorado and to facilitate the enjoyment and use of the scenic and natural resources of the state, it is declared to be the policy of this state to achieve the maximum practical degree of air purity in every portion of the state, to attain and maintain the national ambient air quality standards, and to prevent the significant deterioration of air quality in those portions of the state where the air quality is better than the national ambient air quality standards. To that end, it is the purpose of this article to require the use of all available practical methods which are technologically feasible and economically reasonable so as to reduce, prevent, and control air pollution throughout the state of Colorado; to require the development of an air quality control program in which the benefits of the air pollution control measures utilized bear a reasonable relationship to the economic, environmental, and energy impacts and other costs of such measures; and to maintain a cooperative program between the state and local units of government. It is further declared that the prevention, abatement, and control of air pollution in

each portion of the state are matters of statewide concern and are affected with a public interest and that the provisions of this article are enacted in the exercise of the police powers of this state for the purpose of protecting the health, peace, safety, and general welfare of the people of this state. The general assembly further recognizes that a current and accurate inventory of actual emissions of air pollutants from all sources is essential for the proper identification and designation of attainment and nonattainment areas, the determination of the most cost-effective regulatory strategy to reduce pollution, the targeting of regulatory efforts to achieve the greatest health and environmental benefits, and the achievement of a federally approved clean air program. In order to achieve the most accurate inventory of air pollution sources possible, this article specifically provides incentives to achieve the most accurate and complete inventory possible and to provide for the most accurate enforcement program achievable based upon that inventory.

Source: **L. 79:** Entire article R&RE, p. 1017, 1, effective June 20. **L. 92:** Entire section amended, p. 1165, 4, effective July 1.

ANNOTATION

Law reviews. For article, "Liabilities of Nonoperating Mineral Interest Owners", see 51 U. Colo. L. Rev. 153 (1980).

Control of air pollution is a legitimate subject of legislation under the police power. Lloyd A. Fry Roofing Co. v. State, [179 Colo. 223](#), [499 P.2d 1176](#) (1972).

25-7-103. Definitions.

As used in this article, unless the context otherwise requires:

(1) "Administrator" means the administrator of the federal environmental protection agency.

(1.3) "Adverse environmental effect", as a term used in the context of regulating hazardous air pollutants, means any significant and widespread adverse effect, which may reasonably be anticipated, to wildlife, aquatic life, or other natural resources, including adverse impacts on populations of endangered or threatened species or significant degradation of environmental quality over broad areas.

(1.5) "Air pollutant" means any fume, smoke, particulate matter, vapor, or gas or any combination thereof which is emitted into or otherwise enters the atmosphere, including, but not limited to, any physical, chemical, biological, radioactive (including source material, special nuclear material, and byproduct material) substance or matter, but "air pollutant" does not include water vapor or steam condensate or any other emission exempted by the commission consistent with the federal act. Such term includes any precursors to the formation of any air pollutant, to the extent the administrator of the United States environmental protection agency or the commission has identified such precursor or precursors for the particular purpose for which the term "air pollutant" is used.

(2) "Air pollution control authority" means the division, or any person or agency given authority by the division, or a local governmental unit duly authorized with respect to air pollution control.

(3) "Air pollution source" means any source whatsoever at, from, or by reason of which there is emitted or discharged into the atmosphere any air pollutant.

(4) "Allowable emissions" means the emission rate calculated for a stationary source using the maximum rated capacity of the source (unless the source is subject to enforceable permit conditions which limit the operating rate or hours of operation, or both) and the most stringent of the following:

(a) The applicable standards promulgated pursuant to the federal act for new source performance or hazardous air pollutants;

(b) The applicable Colorado emission control regulation; or

(c) The emission rate specified as a permit condition.

(5) "Ambient air" means that portion of the atmosphere, external to the sources, to which the general public has access.

(5.5) "Appliance" means any device which contains and uses as a refrigerant a class I or class II ozone depleting compound as defined by the administrator and which is used for household or commercial purposes, including any air conditioner, refrigerator, chiller, or freezer.

(5.7) "Approved motor vehicle refrigerant recycling equipment" means any equipment models certified by the administrator, or any independent standards testing organization approved by such administrator, to meet the standards established by the administrator which are applicable to equipment for the extraction of refrigerants from motor vehicle air conditioners. Equipment for such purpose purchased prior to the promulgation of regulations pursuant to section [25-7-105](#) (11) (c) shall be considered certified if it is substantially identical to equipment which is certified by the administrator.

(6) Repealed.

(6.5) "CFC" means any of the chlorofluorocarbon chemicals CFC-11, CFC-12, CFC-112, CFC-113, CFC-114, CFC-115, or CFC-502.

(6.7) "Colorado generally available control technology" or "Colorado GACT" means standards imposed pursuant to section [25-7-109.3](#) (3) utilizing principles of sound engineering judgment in applying the criteria set forth in section 112 (d) of the federal act respecting the creation of standards or requirements utilizing generally available control technologies or management practices by area sources for the reduction of emissions of hazardous air pollutants considering a cost-benefit analysis, economics, the cost and availability of control technology, and the location, nature, and size of the source involved, and the actual or potential impacts on the public health, welfare, and the environment.

(6.8) "Colorado maximum achievable control technology" or "Colorado MACT" means standards imposed pursuant to section [25-7-109.3](#) (3) utilizing principles of sound engineering judgment in applying the criteria set forth in section 112 (d) of the federal act respecting the creation of standards or requirements which provide for the maximum degree of emissions reduction that has been demonstrated to be achievable for the control of hazardous air pollutants, considering a cost-benefit analysis, economics, the cost and availability of control technology, and the location, nature, and size of the source involved, and the actual or potential impacts on the public health, welfare, and the environment.

(7) "Commission" means the air quality control commission created by section [25-7-104](#).

(8) "Construction" means fabrication, erection, installation, or modification of an air pollution source.

(9) "Division" means the division of administration of the department of public health and environment.

(9.5) "Effects on public welfare" means all language referring to effects on public welfare, which includes, but is not limited to, effects on soils, water, crops, vegetation, manmade materials, animals, wildlife, weather, visibility, climate, damage to and deterioration of property, and hazards to transportation, as well as effects on economic values and on personal comfort and well-being, whether caused by transformation, conversion, or combination with other air pollutants.

(10) "Emission" means the discharge or release into the atmosphere of one or more air pollutants.

(11) "Emission control regulation" means and includes any standard promulgated by regulation which is applicable to all air pollution sources within a specified area and which prohibits or establishes permissible limits for specific types of emissions in such area, and also any regulation which by its terms is applicable to a specified type of facility, process, or activity for the purpose of controlling the extent, degree, or nature of pollution emitted from such type of facility, process, or activity, any regulation adopted for the purpose of preventing or minimizing emission of any air pollutant in potentially dangerous quantities, and also any regulation that adopts any design, equipment, work practice, or operational standard. Emission control regulations shall not include standards which describe maximum ambient air concentrations of specifically identified pollutants or which describe varying degrees of pollution of ambient air. Emission control regulations pertaining to hazardous air pollutants, as defined in subsection (13) of this section, shall be consistent with the emission standards promulgated under section 112 of the federal act or section [25-7-109.3](#) in reducing or preventing emissions of hazardous air pollutants, and may include application of measures, processes, methods, systems, or techniques, including, but not limited to, measures which:

(a) Reduce the volume of, or eliminate emissions of, such pollutants through process changes, substitution of materials, or other modifications;

(b) Enclose systems or processes to eliminate emissions;

(c) Collect, capture, or treat such pollutants when released from a process, stack, storage, or fugitive emissions point;

(d) Are design, equipment, or work practice standards (including requirements for operator training or certification); or

(e) Are a combination of the provisions of paragraphs (a) to (d) of this subsection (11).

(11.5) "Emission data" means, with reference to any source of emission of any substance into the air:

(a) Information necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of any emission which has been, or will be, emitted by the source (or of any pollutant resulting from any emission by the source), or any combination thereof;

(b) Information necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of the emission which, under an applicable standard or limitation, the source was authorized to emit (including, to the extent necessary for such purposes, a description of the manner or rate of operation of the source), or any combination thereof;

(c) A general description of the location or nature, or both, of the source to the extent necessary to identify the source and to distinguish it from other sources (including, to the extent necessary for such purposes, a description of the device, installation, or operation constituting the source).

(12) "Federal act" means the federal "Clean Air Act", 42 U.S.C. sec. 7401 et seq. (1970), as the same is in effect on November 15, 1990.

(12.1) "Generally available control technology" or "GACT" means standards promulgated pursuant to section 112 of the federal act which provide for the use of generally available control technologies or management practices for the control of hazardous air pollutants for area sources, as defined in section 112 of the federal act, including equivalent emission limitations by permit pursuant to section 112 (j) of the federal act.

(13) "Hazardous air pollutant" means an air pollutant which presents through inhalation or other routes of exposure, a threat of adverse human health effects (including, but not limited to, substances which are known to be, or may reasonably be anticipated to be carcinogenic, mutagenic, teratogenic, neurotoxic, which cause reproductive dysfunction, or which are acutely or chronically toxic) or adverse environmental effects whether through ambient concentrations, bioaccumulation, deposition, or otherwise and which has been listed pursuant to section 112 of the federal act or section [25-7-109.3](#).

(14) "Indirect air pollution source" means any facility, building, structure, or installation, or any combination thereof, excluding dwellings, which can reasonably be expected to cause or induce substantial mobile source activity which results in emissions of air pollutants which might reasonably be expected to interfere with the attainment and maintenance of national ambient air standards.

(15) "Issue" or "issuance" means the mailing of any order, permit, determination, or notice, other than notice by publication, by certified mail to the last address furnished to the agency by the person subject thereto or personal service on such person, and the date of issuance of such order, permit, determination, or notice shall be the date of such mailing or service or such later date as is stated in the order, permit, determination, or notice.

(16) "Local air pollution law" means any law, ordinance, resolution, code, rule, or regulation adopted by the governing body of any city, town, county, or city and county, pertaining to the prevention, control, and abatement of air pollution.

(16.5) "Maximum achievable control technology" or "MACT" means emission standards promulgated under section 112 of the federal act requiring the maximum degree of emissions reduction that has been demonstrated to be achievable for the control of hazardous air pollutants, including equivalent emission limitations by permit pursuant to section 112 (j) of the federal act.

(17) "Malfunction" means any sudden and unavoidable failure of air pollution control equipment or process equipment or unintended failure of a process to operate in a normal or usual manner. Failures that are primarily caused by poor maintenance, careless operation, or any other preventable upset condition or preventable equipment breakdown shall not be considered malfunctions.

(18) "Motor vehicle" means any self-propelled vehicle which is designed primarily for travel on the public highways and which is generally and commonly used to transport persons and property over the public highways.

(18.3) "Motor vehicle air conditioner" means any air conditioner designed for installation in a motor vehicle which uses as a refrigerant any class I or class II ozone depleting compound as defined by the administrator.

(18.4) "Owner or operator" means any person who owns, leases, operates, controls, or supervises a stationary source.

(18.5) "Ozone depleting compound" means any substance on the list of class I and class II ozone depleting compounds as defined by the administrator and as referenced in section 602 of the "Federal Clean Air Act of 1990".

(19) "Person" means any individual, public or private corporation, partnership, association, firm, trust, estate, the United States or the state or any department, institution, or agency thereof, any municipal corporation, county, city and county, or other political subdivision of the state, or any other legal entity whatsoever which is recognized by law as the subject of rights and duties.

(19.5) "Refrigeration system" includes refrigerators, freezers, cold storage warehouse refrigeration systems, and air conditioners, any of which hold more than one hundred pounds of refrigerant or more than one hundred pounds total if more than one refrigeration unit or system exists at the same location.

(20) "Shutdown" means the cessation of operation of any air pollution source for any purpose.

(21) "Start-up" means the setting in operation of any air pollution source for any purpose.

(22) "State implementation plan" means the plan required by and described in section 110(a) of the federal act.

(23) "Stationary source" means any building, structure, facility, or installation which emits or may emit any air pollutant.

Source: **L. 79:** Entire article R&RE, p. 1018, 1, effective June 20. **L. 84:** (6) repealed, p. 768, 1, effective July 1. **L. 89:** (6.5) and (19.5) added, p. 1156, 2, effective January 1, 1990. **L. 92:** (1), (11), (12), (13), and (19) amended and (1.3), (1.5), (6.7), (6.8), (9.5), (11.5), (12.1), (16.5), and (18.4) added, p. 1166, 5, effective July 1; (1) amended and (1.5), (5.5), (5.7), (18.3), and (18.5) added, p. 1291, 1, effective July 1. **L. 94:** (9) amended, p. 2780, 494, effective July 1. **L. 2006:** IP added, p. 1504, 46, effective June 1.

Editor's note: (1) Amendments to subsection (1.5) by Senate Bill 92-105 and House Bill 92-1178 were harmonized.

(2) Subsection (18.4) was enacted as subsection (18.3) by Senate Bill 92-105, Session Laws of Colorado 1992, chapter 179, section 5, but has been renumbered on revision for ease of location.

Cross references: (1) For the legislative declaration contained in the 1994 act amending subsection (9), see section 1 of chapter 345, Session Laws of Colorado 1994.

(2) For the federal "Clean Air Act Amendments of 1990", see 42 U.S.C. sec. 7401, et seq.; Pub.L. 101-549, Nov. 15, 1990.

ANNOTATION

Regulation of fugitive dust emission. Regulations adopted to accomplish the regulation of fugitive dust emission must be sufficiently definitive and specific that everyone involved will be able to determine what it is that he may or may not do. Such regulations must be uniformly applicable to all persons creating the same type of emission while engaged in the same function for the same purposes. *CF&I Steel Corp. v. Colo. Air Pollution Control Comm'n*, 44 Colo. App. 111, 640 P.2d 238 (1981).

25-7-104. Air quality control commission created.

(1) There is hereby created in the department of public health and environment the air quality control commission, which shall consist of nine citizens of this state who shall be appointed by the governor with the consent of the senate.

(2) Appointments to the commission shall be made so as to include persons with appropriate scientific, technical, industrial, labor, agricultural, and legal training or with experience on the commission; although no specific number of its members shall be required to be so trained or experienced, three members shall have appropriate private sector, technical, or industrial employment experience. No more than five commissioners shall be members of one political party.

(3) Terms of members shall be for three years, and said terms shall commence on February 1 of the year of appointment. Any vacancy occurring during the term of office of any member shall be filled by appointment by the governor of a qualified person for the unexpired portion of the regular term.

(4) The governor may remove any member of the commission for malfeasance in office, failure to regularly attend meetings, or any cause that renders such a member incapable or unfit to discharge the duties of his office, and any such removal, when made, shall not be subject to review. If any member of the commission is absent from two consecutive meetings, the chairman of the commission shall determine whether the cause of such absences was reasonable. If he determines that the cause of the absences was unreasonable, he shall so notify the governor, who shall appoint a qualified person for the unexpired portion of the regular term.

(5) Each member of the commission not otherwise in full-time employment of the state shall receive a per diem of forty dollars for each day actually and necessarily spent in the discharge of official duties, but not to exceed twelve hundred eighty-four dollars in any one year; and all members shall receive traveling and other necessary expenses actually incurred in the performance of official duties.

(6) Each year the commission shall select from its own membership a chairman, vice-chairman, and secretary. The secretary of the commission shall keep a record of its proceedings. The commission shall hold regular public monthly meetings and may hold special meetings on the call of the chairman or vice-chairman at such other times as deemed necessary. Written notice of the time and place of all meetings shall be mailed by the secretary at least five days in advance of any such meetings to each member.

(7) All members shall have a vote. Two-thirds of the commission shall constitute a quorum, and the concurrence of a majority of the commission in any matter within its powers and duties shall be required for any determination made by the commission.

(8) The commission shall have at least a majority of members who represent the public interest and do not derive a significant portion of their income from persons subject to permits or enforcement orders under this article or under the federal act. The members of the commission shall disclose any potential conflicts of interest to the governor and the committee of reference of the general assembly prior to confirmation and shall disclose any potential conflicts of interest which arise during their terms of membership to the governor and to the other commission members in a public meeting of the commission.

(9) (Deleted by amendment, L. 92, p. 1169, 6, effective July 1, 1992.)

Source: L. 79: Entire article R&RE, p. 1020, 1, effective June 20. L. 84: (2) amended, p. 768, 2, effective July 1. L. 92: (7) and (9) amended, p. 1169, 6, effective July 1. L. 94: (1) amended, p. 2780, 495, effective July 1. L. 2005: (2) amended, p. 282, 17, effective August 8.

Cross references: For the legislative declaration contained in the 1994 act amending subsection (1), see section 1 of chapter 345, Session Laws of Colorado 1994.

ANNOTATION

Air pollution control commission is "agency" within the meaning of [24-4-102](#) (3) and [24-4-107](#) and is subject to the provisions of the state administrative procedure act. *CF&I Steel Corp. v. Colo. Air Pollution Control Comm'n*, [199 Colo. 270, 610 P.2d 85](#) (1980).

Potential conflict of interest under subsection (8) was not undisclosed and, if an actual conflict existed, it was immaterial to the outcome of the commission's rule-making. *Sohocki v. Air Quality Control Comm'n*, [12 P.3d 274](#) (Colo. App. 1999).

Remedy for nondisclosure of conflict of interest is not specified in this section. Therefore, the court of appeals adopts a balancing test, depending on whether the official with the alleged conflict cast the deciding vote. If so, the agency's action is invalid. If not, the court must examine three factors: (1) Whether the official disclosed the interest, or whether the other officials were fully aware of it; (2) the extent of the official's participation in the proceeding; and (3) the magnitude of the official's alleged interest. *Sohocki v. Air Quality Control Comm'n*, [12 P.3d 274](#) (Colo. App. 1999).

25-7-105. Duties of commission - rules.

(1) Except as provided in section [25-7-130](#) and [25-7-131](#), the commission shall promulgate such rules and regulations as are consistent with the legislative declaration set forth in section [25-7-102](#) and necessary for the proper implementation and administration of this article, including but not limited to:

(a) (I) A comprehensive state implementation plan which will assure attainment and maintenance of national ambient air quality standards and which will prevent significant deterioration of air quality, all in conformity with the provisions of this article. The comprehensive plan shall meet all requirements of the federal act and shall be revised whenever necessary or appropriate.

(II) The comprehensive state implementation plan of the commission shall, wherever feasible, include local or regional air pollution plans and programs adopted or enforceable by municipal or county governments. Before making any changes to those portions of the state implementation

plan which include such air pollution plans and programs or to such plans and programs which are suggested for inclusion in the state implementation plan, the commission shall give thirty days' notice of the proposed changes to the affected municipal or county government to allow a reasonable opportunity to prepare comments on the proposed changes. The commission shall consider such comments in its action on the state implementation plan and shall document in the record of the hearing its reasons for any changes to such plans and programs. Any such plans and programs which are approved by the commission and formally submitted as a part of the state implementation plan shall be deemed a part of the comprehensive program of the commission and shall be enforced as such.

(III) The revisions to the Denver element of the PM-10 state implementation plan adopted by the commission on February 16, 1995, which contain a sixty tons-per-day PM-10 mobile source emissions budget which expires January 1, 1998, and reverts to a forty-four tons-per-day budget, are amended to provide that such forty-four tons-per-day reversion shall not be a part of the state implementation plan and shall only apply as a regulation adopted exclusively under reserved state authority pursuant to the provisions of section [25-7-105.1](#). The sixty tons-per-day emissions budget shall, unless modified by the commission through rule-making, apply for federal transportation conformity and is included in the state implementation plan only as required by the federal act. Any entity with authority to adopt a transportation plan required under section [43-1-1103](#), C.R.S., shall consider any mobile source emissions budgets in effect under this article in the development of transportation improvement programs for federal purposes.

(IV) Notwithstanding the provisions of section [25-7-133](#), the expiration of the state implementation plan for ozone maintenance and related rules of the air quality control commission, and the amendments to commission regulations number 3 and 7, which state implementation plan and rules, and amendments to regulations number 3 and 7, were adopted or amended by the commission on March 21, 1996, and which are therefore scheduled for expiration May 15, 1997, is postponed until December 31, 2005, and the provisions of section [24-4-108](#), C.R.S., shall apply.

(b) Emission control regulations in conformity with section [25-7-109](#);

(c) A prevention of significant deterioration program in conformity with part 2 of this article and federal requirements; except that definitions used in the program shall not differ from any definitions pertaining to the prevention of significant deterioration program which appear in section 169 of the federal act or in federal regulations promulgated thereunder, and an attainment program in conformity with part 3 of this article;

(d) A satisfactory process of consultation with general purpose local governments and any federal land manager having authority over federal land to which the state implementation plan applies, effective with respect to measures adopted after August 7, 1978, pertaining to transportation controls, air quality maintenance plan requirements, preconstruction review of stationary sources of air pollution, or any measure referred to in the prevention of significant deterioration program established pursuant to part 2 of this article or the attainment program established pursuant to part 3 of this article, or granting delayed compliance orders pursuant to section [25-7-118](#).

(2) The commission shall provide forms of application and shall receive all such applications for review of the classification of any attainment, nonattainment, or unclassifiable area within the

state made pursuant to section [25-7-106](#) (1) or [25-7-107](#) (2), all applications for designation or redesignation made pursuant to section [25-7-208](#), and all applications for any revision of general application of the state implementation plan and shall set such applications for hearing and determination by the commission in accordance with the provisions of section [25-7-119](#).

(3) The commission shall employ a technical secretary and shall delegate to such secretary such duties and responsibilities as it may deem necessary; except that no authority shall be delegated to such secretary to adopt, promulgate, amend, or repeal standards or regulations, or to make determinations, or to issue or countermand orders of the commission. Such secretary shall have appropriate practical, educational, and administrative experience related to air pollution control and shall be employed pursuant to the state personnel system laws.

(4) (a) The commission and the state board of health shall hold a joint public hearing during the month of October of each year in order to hear public comment on air pollution problems within the state, alleged sources of air pollution within the state, and the availability of practical remedies therefor; and at such hearing the technical secretary shall answer reasonable questions from the public concerning administration and enforcement of the various provisions of this article, as well as rules and regulations promulgated under the authority of this article.

(b) On or before September 30, 1993, the commission shall publish and revise from time to time thereafter, as is necessary, a regulatory agenda which includes its schedule for future rule-making and its schedule for implementing section [25-7-109.3](#) and other air quality programs.

(5) Prior to the hearing required under subsection (4) of this section, the commission shall prepare and make available to the public a report, which shall contain the following specific information:

(a) A description of the pollution problem in each of the polluted areas of the state, described separately for each such area;

(b) To the extent possible, the identification of the sources of air pollution in each separate area of the state, such as motor vehicles, industrial sources, and power-generating facilities;

(c) A list of all alleged violations of emission control regulations showing the status of control procedures in effect with respect to each such alleged violation; and

(d) Stationary industrial sources permitting information as follows:

(I) The total number of permits issued;

(II) The total number of hours billed for permitting;

(III) The average number of hours billed per permit; and

(IV) The number of general permits issued.

(6) and (7) Repealed.

(8) (Deleted by amendment, L. 92, p. 1170, 7, effective July 1, 1992.)

(9) The commission shall adopt exhaust emissions standards for motor vehicles purchased for state use and shall assist the executive director of the department of personnel in determining those vehicles which meet or exceed such standards.

(10) The commission shall promulgate such rules and regulations as are necessary to implement the provisions of part 5 of this article concerning asbestos control.

(11) The commission shall promulgate rules concerning CFC and ozone-depleting compounds as follows:

(a) Regulations requiring the recycling or reuse of any refrigerant containing CFC which is removed from the refrigeration system of a retail store, cold storage warehouse, or commercial or industrial building by any person who installs, services, repairs, or disposes of such system as a result of service to or disposal of such system;

(b) Regulations prohibiting the intentional venting or disposal of any refrigerant containing CFC by the owner or operator of a retail store, cold storage warehouse, or commercial or industrial building and requiring the recycling or reuse of such refrigerant;

(c) Regulations requiring the use of approved motor vehicle refrigerant recycling equipment during the repair or servicing of a motor vehicle air conditioner, requiring that such repair or servicing be done by a person certified in accordance with federal regulations, and including requirements for reclamation of refrigerants during the disposal of a vehicle;

(d) Repealed.

(e) Regulations which establish requirements for recycling;

(f) Regulations which conform with the requirements of section 608 of the "Federal Clean Air Act of 1990" to establish standards and requirements regarding the use and disposal of class I and class II ozone depleting compounds during the service, repair, or disposal of appliances and industrial process refrigeration. If federal training and certification requirements are adopted under section 609 of the "Federal Clean Air Act of 1990" as of January 1, 1993, no state training and certification requirements shall be adopted. If the federal regulations are not adopted, then such state regulations shall contain training and certification requirements substantially similar to those required under section 609 of the "Federal Clean Air Act of 1990". Such regulations shall also include provisions for the imposition and collection of a certification fee sufficient to implement the training, certification, and enforcement requirements of this paragraph (f).

(g) Repealed.

(h) Rules that are necessary for the imposition and collection of a fee for registering as stationary sources refrigeration systems and other appliances that contain a minimum of one hundred pounds or use a drive system of one hundred horsepower or more and use ozone-depleting compounds. The fee set by the commission shall reflect the direct and indirect costs of registering refrigeration systems and appliances; however, such fee shall not exceed seventy-five dollars per unit and shall not exceed a maximum of three hundred dollars per facility.

(12) The commission shall promulgate such rules and regulations as are necessary to implement the provisions of the emission notice and construction permit programs and the minimum elements of a permit program provided in Title V of the federal act.

(13) (a) The commission shall promulgate rules and regulations requiring motor vehicles which have manufacturer-installed diagnostic systems for emission controls to have such diagnostic systems inspected and maintained consistent with section 202 of the federal act as part of the periodic inspection of vehicle emission control systems required pursuant to this article.

(b) This subsection (13) shall take effect July 1, 1994.

(14) The commission shall repeal the clean vehicle fleet program mandated by section 246 of the federal act and shall replace such program if required by federal law. Nothing in this subsection (14) shall be deemed to impair the availability of the income tax credit established pursuant to section [39-22-516](#), C.R.S.

(15) The commission shall promulgate rules and regulations as are necessary to provide an emission reduction incentive permit fee credit program which provides for a permit fee reduction in the year following the year in which a permittee achieves an early reduction in emissions of hazardous air pollutants, consistent with the provisions of section 112 of the federal act and section [25-7-114.3](#).

(16) The commission shall give priority to and take expeditious action upon consideration of the following:

(a) A request by a unit of local government to investigate and resolve air quality problems associated with a source;

(b) A request by a unit of local government for inclusion of a locally developed air pollution control measure in a state implementation plan;

(c) A request by a unit of local government that the commission consider local concerns respecting environmental and economic effects in the context of a proceeding where the state is targeting a source for imposition of additional air pollution controls.

(17) (a) Not later than December 31, 2002, and no less frequently than every five years thereafter, the commission shall conduct rule-making hearings to approve an update to the emission inventories from state and federal public land management agency activities on public lands resulting in emissions of any criteria pollutant, including surrogates or precursors for that pollutant, that affect any mandatory class I federal areas in Colorado by reducing visibility in such areas. At a minimum, such inventories shall report on emissions from the sources set forth in paragraph (d) of this subsection (17).

(b) The commission shall ensure that the division prepares inventories for all state land management agencies with jurisdiction over state lands, including, without limitation, the state land board, the department of agriculture, and the department of natural resources, to provide an inventory of emissions from land management activities that are sources of pollutant emissions that may affect any mandatory class I federal area in Colorado by reducing visibility in such areas; except that the commission shall exempt from the inventory requirement any sources or categories of sources that it determines to be of minor significance.

(c) The commission shall use the emission inventories provided under this subsection (17) to develop control strategies for reducing emissions within the state as a component of the visibility long-term strategies for inclusion in the state implementation plan and for inclusion in any environmental impact statement or environmental assessment required to be performed under the federal "National Environmental Policy Act of 1969", 42 U.S.C. secs. 4321 to 4347.

(d) The rule-making hearing held to approve the inventories provided under this subsection (17) shall require public participation and shall require the reporting of both current emissions

and projected future emissions, over at least a five-year period, from the following sources on public land that affect any mandatory class I federal areas in Colorado:

(I) Stationary source emissions, based on existing air pollution emission notices filed with the division;

(II) Mobile sources utilizing state lands, excluding state and federal highways;

(III) Paved and unpaved roads;

(IV) Fires on public lands from all sources;

(V) Biogenic sources, including emissions from flora and fauna.

(e) Each inventory provided under this subsection (17) shall state the basis and methodology used to accumulate the data and shall be based upon data that are:

(I) Developed no later than three years prior to the submittal; and

(II) No more than five years old.

(18) Upon petition by any person or on its own motion, for good cause shown, the commission may determine that the emission inventory of any criteria pollutant, including a surrogate or precursor for that pollutant, for a region of the state is inadequate for purposes of commission rule-making or adjudications in connection with development of the state implementation plan, selection of pollution control strategies, attribution of emissions to sources or categories of sources, or findings of adverse impacts. If, after conducting a public hearing in accordance with the rule-making provisions of the "State Administrative Procedure Act", article 4 of title 24, C.R.S., the commission finds that the emission inventory should be revised to take into consideration existing credible studies or scientific data in order to reasonably attribute emissions to source categories, it shall direct that such revision be performed prior to a final rule-making or adjudication.

(19) The commission may coordinate with the United States secretary of the interior and the United States secretary of agriculture to develop air quality management plans consistent with this article for federal lands pursuant to 16 U.S.C. sec. 530, 16 U.S.C. sec. 1604, and 43 U.S.C. sec. 1712.

(20) The commission may, within existing resources:

(a) Analyze a range of residential, commercial, and industrial biomass equipment for air emissions standards;

(b) Identify biomass equipment that meets the emissions standards; and

(c) Publicly post a statement of the parameters for equipment fueled by biomass that is smaller than one million British thermal units, as defined in section 8-20-201 (1.3), C.R.S., per hour and include a list of biomass equipment that meets the emissions standards.

Source: L. 79: Entire article R&RE, p. 1021, 1, effective June 20; (9) added, p. 1551, 14, effective June 20. **L. 81:** (9) amended, p. 1296, 35, effective January 1, 1982. **L. 84:** (2) and (8) amended and (7) repealed, p. 768, 3, 1, effective July 1. **L. 87:** (10) added, p. 1151, 2, effective July 1. **L. 89:** (11) added, p. 1156, 3, effective January 1, 1990. **L. 92:** (1)(c), (4), (8), and IP(11) amended and (11)(c) to (11)(g) and (12) to (16) added, pp. 1170, 1292, 7, 2, effective July 1. **L.**

93: (11)(h) added, p. 958, 1, effective May 28. **L. 95:** (1)(a)(III) added, p. 1149, 1, effective May 31. **L. 96:** (1)(a)(IV) added, p. 1038, 2, effective May 23; (9) amended, p. 1541, 130, effective June 1; (6) repealed, p. 1257, 149, effective August 7. **L. 99:** (17) and (18) added, p. 1246, 1, effective June 2. **L. 2002:** (14) R&RE, p. 1066, 1, effective August 7. **L. 2003:** (19) added, p. 1035, 6, effective April 17; (11)(d) repealed, p. 724, 3, effective July 1. **L. 2005:** (11)(g) repealed, p. 282, 18, effective August 8. **L. 2008:** IP(11) and (11)(h) amended, p. 882, 1, effective May 20. **L. 2010:** (5) amended, (HB 10-1042), ch. 209, p. 908, 1, effective September 1. **L. 2011:** (14) amended, (SB 11-163), ch. 13, p. 37, 3, effective March 9. **L. 2013:** (20) added, (SB 13-273), ch. 406, p. 2374, 4, effective June 5.

Cross references: (1) For the legislative declaration contained in the 1996 act enacting subsection (1)(a)(IV), see section 1 of chapter 210, Session Laws of Colorado 1996. For the legislative declaration contained in the 1996 act repealing subsection (6), see section 1 of chapter 237, Session Laws of Colorado 1996. For the legislative declaration contained in the 2003 act enacting subsection (19), see section 1 of chapter 145, Session Laws of Colorado 2003. For the legislative declaration in the 2013 act adding subsection (20), see section 1 of chapter 406, Session Laws of Colorado 2013.

(2) For the federal "Clean Air Act Amendments of 1990", see 42 U.S.C. sec. 7401, et seq.; Pub.L. 101-549, Nov. 15, 1990.

25-7-105.1. Federal enforceability.

(1) To the extent that any provision of this article or any standard or regulation promulgated pursuant thereto is not required by Part C (prevention of significant deterioration), Part D (nonattainment), or Title V (minimum elements of a permit program) of the federal act, or is not required by section 111 of the federal act, or is not required for sources to participate in the early reduction program of section 112 of the federal act, or is not required for sources to be excluded as a major source under this article, or is otherwise more stringent than other requirements of the federal act, such provision, standard, or regulation is hereby declared to be adopted under powers reserved to the state of Colorado pursuant to section 116 of the federal act. Any such provision, standard, or regulation adopted exclusively under state authority shall not constitute part of the state implementation plan.

(2) Whenever the division or commission grants relief to an owner or operator of a new or modified stationary source from that part of a state standard or regulation which is not required by Part C (prevention of significant deterioration), Part D (nonattainment), or Title V (minimum elements of a permit program) of the federal act, or is not required by section 111 of the federal act, or is not required for sources to participate in the early reduction program of section 112 of the federal act, or is not required for sources to be excluded as a major source under this article, or which is otherwise more stringent than other requirements of the federal act and is not included as part of the state implementation plan, such relief shall be governed exclusively by the laws of this state and the regulations of the commission.

(3) To the extent any term or condition contained in any permit issued pursuant to this article is not required by Part C (prevention of significant deterioration), Part D (nonattainment), or Title V (minimum elements of a permit program) of the federal act, or is not required by section 111 of the federal act, or is not required for sources to participate in the early reduction program of section 112 of the federal act, or is not required for sources to be excluded as a major source under this article, or is otherwise more stringent than other requirements of the federal act, such

term or condition shall be subject to enforcement exclusively under the laws of this state and the regulations of the commission.

Source: L. 92: Entire section added, p. 1172, 8, effective July 1.

25-7-106. Commission - additional authority.

(1) Except as provided in section [25-7-130](#) and [25-7-131](#), the commission shall have maximum flexibility in developing an effective air quality control program and may promulgate such combination of regulations as may be necessary or desirable to carry out that program; except that such program and regulations shall be consistent with the legislative declaration set forth in section [25-7-102](#). Such regulations may include, but shall not be limited to:

(a) Classification and, as appropriate, reclassification of the state into attainment, nonattainment, and unclassifiable areas, and division of the state into such control regions or areas as may be necessary or desirable for effective administration of this article;

(b) Classification and definition of different degrees or types of air pollution;

(c) Emission control regulations that are applicable to the entire state, that are applicable only within specified areas or zones of the state, or that are applicable only when a specified class of pollution is present;

(d) Development of a high altitude performance adjustment program for motor vehicles to the extent authorized by section 215 of the federal act;

(e) Development of a control or prohibition respecting the use of a fuel or fuel additives in a motor vehicle or motor vehicle engine to the extent authorized by section 211(c) of the federal act if, based on sound scientific data, the commission finds that a measurable reduction in ambient concentrations of criteria pollutants or other pollutants shall occur.

(2) The commission may hold public hearings, issue notice of hearings, issue subpoenas requiring the attendance of witnesses and the production of evidence, administer oaths, and take such testimony as it deems necessary, all in conformity with article 4 of title [24](#), C.R.S., and with section [25-7-110](#) and [25-7-119](#).

(3) The commission may adopt such rules and regulations in conformity with article 4 of title [24](#), C.R.S., governing procedures before the commission as may be necessary to assure that hearings before the commission will be fair and impartial.

(4) (a) In the event the commission, after hearing, finds and determines that a particular style or model of automobile air pollution control device is not sufficiently effective to justify the continued connection and operation of such device, the commission shall so notify the department of revenue; thereafter, all devices of such particular style or model shall be exempt from the provisions of section [42-4-314](#), C.R.S.

(b) Repealed.

(4.1) Repealed.

(5) The commission may exercise all incidental powers necessary to carry out the purposes of this article.

(6) The commission may require the owner or operator, or both, of any air pollution source to:

(a) Establish and maintain reports as prescribed by the commission;

(b) Install, use, and maintain monitoring equipment or methods as prescribed by the commission;

(c) Record, monitor, and sample emissions in accordance with such methods, at such locations, at such intervals, and in such manner as the commission shall prescribe;

(d) Provide such other information as the commission may require.

(7) (a) The commission is specifically authorized and directed to develop a program to apply and enforce every relevant provision of the state implementation plan and every relevant emission control strategy to minimize emissions, including the impacts of actions by significant users of prescribed fire, including federal, state, and local government, and private land managers that are significant users of prescribed fire. The program developed by the commission under this subsection (7) shall include, but not be limited to, the imposition of any fees necessary to administer the program, including the recovery of costs by the state for the evaluation of planning documents pursuant to subsection (8) of this section, and the imposition of penalties pursuant to section [25-7-122](#).

(b) The general assembly hereby finds, determines, and declares that the Grand Canyon visibility transport commission's recommendations for improving western vistas report identified the emissions from fire, both wildfire and prescribed fires, as likely to have the single greatest impact on visibility at class I areas through the year 2040. The emissions from fire, both wildfire and prescribed fire, are an important episodic contributor to visibility impairing aerosols. The Grand Canyon visibility transport commission report identified that significant amounts of visibility impairment result from activities on federal lands, from mobile sources, and from Mexico.

(c) The general assembly further finds, determines, and declares that emissions from grassland and forest fires have substantial episodic impacts on ambient air quality throughout the state and are a major source of visibility impairment over which this state has jurisdiction but has not yet developed a comprehensive program to reduce such impairment.

(d) The general assembly further finds, determines, and declares that the standard in its statement of legislative purpose in section [25-7-102](#) of the "Colorado Air Pollution Prevention and Control Act" requiring the use of all practical methods that are technologically feasible and economically reasonable so as to reduce, prevent, and control air pollution is an appropriate standard to apply in relation to air pollution emissions resulting from the use of prescribed fire in grassland and forest management.

(e) This subsection (7) and subsection (8) of this section are adopted pursuant to section 118 of the federal act and shall be construed to exercise the full extent of the state's authority as granted by the provisions of said federal act. The federal government, as the only landowner of its size in the state and the only landowner in the state other than the state government itself that routinely prepares plans involving the management of grassland and forest lands using prescribed fire, is appropriately subject to the requirements of this section pertaining to review and approval of planning documents.

(f) Persons owning or managing large parcels of land who significantly use prescribed fire as a grassland or forest management tool shall prepare plans addressing the use and role of prescribed fire and the air quality impacts resulting therefrom, and such plans are appropriately subject to the review requirements of this section. The state, by reviewing these types of plans, can achieve significant progress towards cooperatively reducing emissions from those lands that impact visibility in Colorado.

(g) As used in this subsection (7) and in subsection (8) of this section, the term "significant user of prescribed fire" means a federal, state, or local agency or significant management unit thereof or person that collectively manages or owns more than ten thousand acres of grasslands or forest lands within the state of Colorado and that uses prescribed fire. The adoption of a fire management plan by a local or county unit of government pursuant to section 30-11-124, C.R.S., does not constitute management for purposes of this section unless the county or local unit of government owns or manages more than ten thousand acres and is a significant user of prescribed fire. "Prescribed fire" means fire that is intentionally used for grassland or forest management, regardless of whether the fire is caused by natural or human sources. Prescribed fire does not include open burning in the course of agricultural operations and does not include open burning for the purpose of maintaining water conveyance structures, unless the commission acts pursuant to section 25-7-123. The commission shall by rule exempt from the program developed pursuant to this subsection (7) those sources that have an insignificant impact on visibility and air quality.

(8) (a) The commission, in exercising the powers conferred by subsection (7) of this section and this subsection (8), shall require all significant users of prescribed fire, including federal agencies for activities directly conducted by or on behalf of federal agencies on federal lands, to minimize emissions using all available, practicable methods that are technologically feasible and economically reasonable in order to minimize the impact or reduce the potential for such impact on both the attainment and maintenance of national ambient air quality standards and the achievement of federal and state visibility goals.

(b) (I) In order to ensure compliance with the requirements of paragraph (a) of this subsection (8), significant users of prescribed fire shall submit planning documents to the commission. The commission shall then conduct a public hearing to review each planning document submitted relevant to achieving the goal of minimizing emissions and impacts as set forth in paragraph (a) of this subsection (8). Only one hearing shall be held for each planning document. The commission shall hold a hearing and complete its review of the planning documents submitted by any significant user of prescribed fire within forty-five days of their receipt by the commission, unless otherwise agreed to by the significant user of prescribed fire.

(II) As used in this paragraph (b), "planning documents" means documents that summarize the use of prescribed fire as a grassland or forest management tool and the associated discharge or release of air pollution and that demonstrate how compliance with the state standard expressed in section 25-7-102 shall be achieved. "Planning documents" shall include land management plans or a summary of the equivalent information that explains and supports the land management criteria evaluated and the decision to use prescribed fire as the fuel treatment method. Planning documents shall include a discussion of the alternatives considered and a discussion of how prescribed fire, if selected, minimizes the risk of wildfire.

(III) The commission shall have discretion to adopt rules governing the resubmission of planning documents to prevent such plans from becoming outdated.

(c) Following a public hearing, the commission shall comment and make recommendations to the significant user of prescribed fire regarding any changes to elements of the plan relating to the discharge or release of air pollutants that the commission finds necessary to comply with the state standard expressed in section [25-7-102](#).

Source: **L. 79:** Entire article R&RE, p. 1023, 1, effective June 20. **L. 81:** (4) amended, p. 1944, 5, effective July 1; (4.1) added, p. 1951, 19, effective July 1, 1984. **L. 84:** (3) amended, p. 769, 4, effective July 1; (4)(b) and (4.1) repealed, p. 1080, 1, effective July 1. **L. 88:** (1)(e) amended, p. 1073, 1, effective April 28. **L. 94:** (4)(a) amended, p. 2559, 62, effective January 1, 1995. **L. 99:** (7) and (8) added, p. 788, 1, effective May 24. **L. 2000:** (4)(a) amended, p. 1637, 13, effective June 1. **L. 2001:** (7) and (8) amended, p. 1182, 1, effective July 1.

25-7-106.1. Commission - duties - visibility standard - report. (Repealed)

Source: **L. 89:** Entire section added, p. 1156, 4, effective May 26. **L. 90:** (2) amended, p. 1847, 42, effective May 31. **L. 96:** Entire section repealed, p. 1258, 152, effective August 7.

Cross references: For the legislative declaration contained in the 1996 act repealing this section, see section 1 of chapter 237, Session Laws of Colorado 1996.

25-7-106.3. Commission - duties - wood-burning stoves - episodic no-burn days - rules.

(1) The commission shall promulgate, no later than March 1, 1990, such combination of regulations as it may find to be cost-effective and consistent with the legislative declaration set forth in section [25-7-102](#) in order to establish limitations on the use of wood-burning stoves and fireplaces during those periods of time declared by the Colorado department of health to be a high pollution day. The department may declare a high pollution day based on experienced or anticipated excessive levels of carbon monoxide or particulates when air pollution standards are exceeded for particulates, carbon monoxide, or visibility. The limitations on the use of wood-burning stoves and fireplaces imposed pursuant to this section may include no-burn days, and such no-burn days shall be specific to the separate airsheds within the Denver-Boulder metropolitan area. Such limitations shall be applicable only in those portions of the counties of Adams, Arapahoe, Boulder, Denver, Douglas, and Jefferson which are located in the AIR program area, as such area is defined in section [42-4-304](#) (20), C.R.S. Such regulations shall exclude areas above seven thousand feet unless the commission determines that particulates from wood burning in such areas are contributing to the brown cloud. Such regulations shall not apply to any person who utilizes wood-burning stoves or fireplaces as the primary source of heat in such person's place of residence. Such regulations shall permit exemptions for wood-burning stoves that meet Phase III emissions standards. For the purposes of this section, "Phase III" means wood stove standards adopted by the commission which are more strict than existing wood stove standards. The regulations promulgated pursuant to this subsection (1) shall not be effective until July 1, 1990.

(2) No regulation promulgated by the commission pursuant to subsection (1) of this section shall apply within any municipality which has in effect on January 1, 1990, an ordinance mandating restricted use of wood-burning stoves and fireplaces during those periods of time declared by the Colorado department of health to be high pollution days.

Source: **L. 89:** Entire section added, p. 1157, 4, effective May 26. **L. 93:** (1) amended, p. 1922, 2, effective July 1. **L. 94:** (1) amended, p. 2560, 63, effective January 1, 1995.

25-7-106.5. Commission - duties - alternative fuels - street-cleaning - time-shifting - reports. (Repealed)

Source: **L. 89:** Entire section added, p. 1158, 4, effective May 26. **L. 96:** Entire section repealed, p. 1258, 152, effective August 7.

Cross references: For the legislative declaration contained in the 1996 act repealing this section, see section 1 of chapter 237, Session Laws of Colorado 1996.

25-7-106.7. Regulations - studies - AIR program area.

The authority of the commission to promulgate regulations pursuant to section [25-7-106.3](#) is limited to the program area, as defined in section [42-4-304](#) (20), C.R.S., and such regulations shall not apply outside the program area.

Source: **L. 89:** Entire section added, p. 1158, 4, effective May 26. **L. 93:** Entire section amended, p. 1923, 3, effective July 1. **L. 94:** Entire section amended, p. 2560, 64, effective January 1, 1995. **L. 2001:** Entire section amended, p. 1275, 37, effective June 5.

25-7-106.8. Colorado clean vehicle fleet program.

(1) As used in this section, unless the context otherwise requires:

(a) "Alternative fuel" means compressed natural gas, propane, ethanol, or any mixture of ethanol containing eighty-five percent or more ethanol by volume with gasoline or other fuels, electricity, or any other fuels, which fuels may include, but are not limited to, clean diesel and reformulated gasoline so long as these other fuels make comparable reductions in carbon monoxide emissions and brown cloud pollutants as determined by the air quality control commission. "Alternative fuel" does not include any fuel product, as defined in section [25-7-139](#) (3), that contains or is treated with methyl tertiary butyl ether (MTBE).

(b) to (f) Repealed.

(2) to (7) Repealed.

Source: **L. 92:** Entire section added, p. 1173, 8, effective July 1; (1)(a), (1)(b), and (5) amended, p. 1317, 2, effective July 1. **L. 94:** (1)(c) and (2) amended, p. 2780, 496, effective July 1; (4) amended, p. 2560, 65, effective January 1, 1995. **L. 95:** (1)(a) amended, p. 1191, 1, effective May 31. **L. 98:** (1)(a) amended, p. 1297, 1, effective June 1. **L. 99:** (1)(b), (2), and (3) amended and (6) and (7) added, p. 854, 1, effective May 24. **L. 2000:** (1)(a) amended, p. 763, 3, effective September 1. **L. 2002:** (1)(b) to (1)(f) and (2) to (7) repealed, p. 1066, 2, effective August 7.

Cross references: For the legislative declaration contained in the 1994 act amending subsections (1)(c) and (2), see section 1 of chapter 345, Session Laws of Colorado 1994.

25-7-106.9. Alternative fuels financial incentive program. (Repealed)

Source: L. 89: Entire section added, p. 1163, 1, effective May 26. **L. 92:** Entire section amended, pp. 1175, 1315, 9, 1, effective July 1. **L. 94:** (1)(a) and (1)(e)(I) amended, p. 2781, 497, effective July 1; (1)(e)(II) amended, p. 2561, 66, effective January 1, 1995.

Editor's note: Subsection (2) provided for the repeal of this section, effective July 1, 1997. (See L. 92, p. 1315.)

25-7-107. Commission - area classification.

(1) The commission shall, within one hundred eighty days after June 20, 1979, and thereafter from time to time, if evidence indicates a need, review the current classification of any attainment, nonattainment, or unclassifiable area within the state and shall revise the classification of any such area or part thereof which is calculated by air quality modeling or shown by monitored data or other reliable methods to be invalid.

(2) The commission shall, upon application by the owner or operator of any existing or proposed stationary source, review the designation of any attainment, nonattainment, or unclassifiable area within the state and shall revise the designation of any such area or part thereof which is calculated by air quality modeling or shown by monitored data or other reliable methods to be invalid.

(2.5) Whenever monitoring data for any pollutant for which an area is designated nonattainment demonstrate that the national ambient air quality standard for that pollutant has been attained in accordance with the criteria required under the federal act, the division and commission shall take expeditious action to redesignate the area as attainment for that pollutant.

(3) In making any determination regarding the attainment, nonattainment, or unclassifiable designation of any area within the state with regard to particulate matter, the commission shall consider and, if consistent with the requirements of Part D of the federal act, discount the effects of particulate matter not of a size or substance to adversely affect public health or welfare.

(4) All revisions of designations shall be submitted to the administrator of the United States environmental protection agency.

Source: L. 79: Entire article R&RE, p. 1024, 1, effective June 20. **L. 92:** (2.5) added, p. 1177, 10, effective July 1.

25-7-108. Commission to promulgate ambient air quality standards.

(1) In addition to the other powers and duties enumerated in this article, the commission shall have the power to adopt, promulgate, amend, and modify such standards for the quality of ambient air as may be appropriate or necessary to carry out the purposes of this article, including, but not limited to:

(a) Standards which describe the maximum concentrations of specifically described pollutants that can be tolerated, consistent with the protection of the good health of the public at large; such standards may differ for different parts of the state as may be necessitated by variations in altitude, topography, climate, or meteorology;

(b) Standards which describe the air quality goals that are to be achieved by control programs within specified periods of time; such standards may be either statewide or restricted to specified control areas; and

(c) Standards which describe varying degrees of pollution of ambient air.

(2) Ambient air standards shall include such requirements for test methods and procedures as will assure that the samples of ambient air tested are representative of the ambient air.

(3) Notwithstanding any provision of this article to the contrary, no provision of this article shall preclude the commission from adopting ambient air quality standards which are more stringent than the national ambient air quality standards.

(4) Ambient standards may only be implemented and enforced through permit terms and conditions or regulations promulgated to meet requirements for state implementation plans.

Source: L. 79: Entire article R&RE, p. 1024, 1, effective June 20. **L. 92:** (4) added, p. 1177, 11, effective July 1.

ANNOTATION

Precise standards impractical to administer. Precise standards in the area of air pollution enactments are impractical, if not impossible, to administer. *Lloyd A. Fry Roofing Co. v. State*, 179 Colo. 223, 499 P.2d 1176 (1972).

Broad standards sufficient. Broad standards such as "necessary" have been found sufficient as standards, although incapable of precise definition. *Lloyd A. Fry Roofing Co. v. State*, 179 Colo. 223, 499 P.2d 1176 (1972).

25-7-109. Commission to promulgate emission control regulations.

(1) (a) Except as provided in section [25-7-130](#) and 25-7-131, as promptly as possible, the commission shall adopt, promulgate, and from time to time modify or repeal emission control regulations which require the use of effective practical air pollution controls:

(I) For each significant source or category of significant sources of air pollutants;

(II) For each type of facility, process, or activity which produces or might produce significant emissions of air pollutants.

(b) The requirements and prohibitions contained in such regulations shall be set forth with as much specificity and clarity as is practical. Upon adoption of an emission control regulation under subparagraph (II) of paragraph (a) of this subsection (1) for the control of a specific facility, process, or activity, such regulation shall apply to the exclusion of other emission control regulations adopted pursuant to subparagraph (I) of paragraph (a) of this subsection (1); prior to such adoption, the general regulations adopted pursuant to subparagraph (I) of paragraph (a) of this subsection (1) shall be applicable to such facility, process, or activity. In the formulation of each emission control regulation, the commission shall take into consideration the following:

(I) The state policy regarding air pollution, as set forth in section [25-7-102](#);

(II) Federal recommendations and requirements;

(III) The degree to which altitude, topography, climate, or meteorology in certain portions of the state require that emission control regulations be more or less stringent than in other portions of the state;

(IV) The degree to which any particular type of emission is subject to treatment, and the availability, technical feasibility, and economic reasonableness of control techniques;

(V) The extent to which the emission to be controlled is significant;

(VI) The continuous, intermittent, or seasonal nature of the emission to be controlled;

(VII) The economic, environmental, and energy costs of compliance with such emission control regulation;

(VIII) Whether an emission control regulation should be applied throughout the entire state or only within specified areas or zones of the state, and whether it should be applied only when a specified class or type of pollution is concerned.

(2) Such emission control regulations may include, but shall not be limited to, regulations pertaining to:

(a) Visible pollutants;

(b) Particulates;

(c) Sulfur oxides, sulfuric acids, hydrogen sulfide, nitrogen oxides, carbon oxides, hydrocarbons, fluorides, and any other chemical substance;

(d) Odors, except for livestock feeding operations that are not housed commercial swine feeding operations as defined in section [25-8-501.1](#) (2) (b);

(e) Open burning activity;

(f) Organic solvents;

(g) Photochemical substances;

(h) Hazardous air pollutants.

(3) Emission control regulations adopted pursuant to this section shall include, but shall not be limited to, regulations pertaining to the following facilities, processes, and activities:

(a) Incinerator and incinerator design;

(b) Storage and transfer of petroleum products and any other volatile organic compounds;

(c) Activities which frequently result in particulate matter becoming airborne, such as construction and demolition operations;

(d) Specifications, prohibitions, and requirements pertaining to fuels and fuel additives, such as tetraethyl lead;

(e) Wigwam waste burners, pulp mills, alfalfa dehydrators, asphalt plants, and any other industrial or commercial activity which tends to emit air pollutants as a by-product;

(f) Industrial process equipment;

(g) Industrial spraying operations;

(h) Airplanes;

(i) Diesel-powered machines, vehicles, engines, and equipment;

(j) Storage and transfer of volatile compounds and hazardous or toxic gases or other hazardous substances which may become airborne.

(4) The commission shall promulgate appropriate regulations pertaining to hazardous air pollutants.

(5) The commission shall promulgate appropriate regulations setting conditions and time limitations for periods of start-up, shutdown, or malfunction or other conditions which justify temporary relief from controls. Operations of any air pollution source during periods of start-up, shutdown, and malfunction shall not constitute representative conditions for the purpose of a performance or compliance test.

(6) The commission shall establish test methods and procedures for determining compliance with emission control regulations promulgated under this section and, in so doing, shall, to the maximum degree consistent with the purposes of this article, consider the test methods and procedures established by the United States environmental protection agency and shall adopt such test methods and procedures as shall minimize the possibility of inconsistency or duplication of effort.

(7) All regulations promulgated pursuant to this section shall conform with the provisions of part 5 of this article concerning asbestos control.

(8) (a) Notwithstanding any other provision of this section, the commission shall not regulate emissions from agricultural, horticultural, or floricultural production such as farming, seasonal crop drying, animal feeding operations that are not housed commercial swine feeding operations as defined in section [25-8-501.1](#) (2) (b), and pesticide application; except that the commission shall regulate such emissions if they are "major stationary sources", as that term is defined in 42 U.S.C. sec. 7602 (j), or are required by Part C (prevention of significant deterioration), Part D (nonattainment), or Title V (minimum elements of a permit program), or are participating in the early reduction program of section 112 of the federal act, or is not required by section 111 of the federal act, or is not required for sources to be excluded as a major source under this article.

(b) Nothing in paragraph (a) of this subsection (8), as amended by House Bill 05-1180, as enacted at the first regular session of the sixty-fifth general assembly, shall be construed as changing the property tax classification of property owned by a horticultural or floricultural operation.

(9) (a) The commission shall adopt a procedure consistent with the federal environmental protection agency requirements for determining when there has been a net significant emissions increase which results in a major modification that subjects a source to the permitting requirements of the prevention of significant deterioration program or the nonattainment area new source review. The commission's procedure shall also prohibit sources from circumventing the new source review requirements in a manner consistent with the federal environmental protection agency guidance. Such procedure shall be the same for both the prevention of significant deterioration program and the nonattainment area new source review program and shall not apply to hazardous air pollutants. Such net emissions increase procedure shall be as described in paragraph (b) of this subsection (9), unless and until the federal environmental protection agency requires otherwise or unless after January 1, 1998, the commission:

(I) Undertakes a collaborative process with the affected industries to determine the cost and emission impacts associated with any proposed changes in this procedure;

(II) Reviews at least three years of emissions increases and decreases under the procedures described in paragraph (b) of this subsection (9);

(III) Delivers reports on the matters required in subparagraphs (I) and (II) of this paragraph (a) to the general assembly for its review;

(IV) Determines through rule-making that an applicability procedure for major modifications more stringent than that described in paragraph (b) of this subsection (9) is equitable when considering minor, area, and mobile source controls; and

(V) Determines through rule-making that such more stringent applicability procedure is necessary to attain and to maintain the national ambient air quality standards.

(b) The procedure for determining when there has been a net significant emissions increase shall be consistent with requirements of the federal environmental protection agency and:

(I) Such requirements shall apply only if there is, in the first instance, a significant emissions increase from an individual proposed project or modification. If the individual proposed project or modification will not result in a significant emissions increase, it shall be exempt from the prevention of significant deterioration program and the nonattainment area new source review requirements.

(II) If a project or modification is not exempt under subparagraph (I) of this paragraph (b), each pollutant for which the project results in a significant emissions increase shall be subject to the prevention of significant deterioration program or the nonattainment area new source review requirements only if the sum of all source-wide, non-de minimis, contemporaneous, and creditable emissions increases and decreases of that pollutant or that regulated precursor exceed applicable significance levels. Each specific regulated precursor shall be considered independently in determining applicable significance levels.

(III) In determining the non-de minimis net emissions increase during the contemporaneous period, the commission's procedures shall be consistent with the federal environmental protection agency's review procedure for determining net emissions increases and decreases. Non-de minimis increases shall exclude all increases which would be exempt under commission rules from a requirement to obtain a construction permit under section [25-7-114.2](#).

Source: **L. 79:** Entire article R&RE, p. 1025, 1, effective June 20. **L. 87:** (7) added, p. 1151, 3, effective July 1. **L. 92:** (2)(h) amended and (8) added, p. 1177, 12, effective July 1. **L. 94:** (9) added, p. 1418, 1, effective May 25. **Initiated 98:** (2)(d) and (8) amended, effective upon proclamation of the Governor, December 30, 1998. **L. 2005:** (8) amended, p. 348, 4, effective August 8.

Editor's note: (1) Subsections (2)(d) and (8) were amended by an initiated measure that was adopted by the people at the general election held November 3, 1998. The measure amending subsections (2)(d) and (8) was effective upon proclamation of the Governor, December 30, 1998.

(2) The vote count on the measure at the general election held November 3, 1998, was as follows:

FOR: 790,852

AGAINST: 438,873

ANNOTATION

Law reviews. For comment, "Pre-Enforcement Judicial Review: CF&I Steel Corp. v. Colo. Air Pollution Control Commission", see 58 Den. L.J. 693 (1981).

Factors to be considered in promulgation. Commission-promulgated regulations may and sometimes must be formulated with regard to the various factors which either constitute, produce, or dispel air pollution: e.g., classifying different types and degrees of air pollution; promulgating regulations applicable to either a part or the whole of the state; describing maximum concentrations of contaminants that can be tolerated depending on variations in altitude, topography, climate, or meteorology; taking into consideration the degree to which any particular type of emission is subject to treatment; and considering the continuous, intermittent, or seasonal nature of the emission to be controlled. *Lloyd A. Fry Roofing Co. v. State*, 179 Colo. 223, 499 P.2d 1176 (1972).

Where an electrical generating unit has the same industrial grouping as two other units located on contiguous property and all three units are operated by the same entity, there was no error in concluding that the unit is not a separate source. Therefore, increased emissions from the unit should be considered in conjunction with reduced emissions from the other two units, and the source-wide emission increases did not exceed the applicable significance levels. *Citizens for Clean Air & Water v. Colo. Dept. of Pub. Health & Env't*, 181 P.3d 393 (Colo. App. 2008).

Applied in *CF&I Steel Corp. v. Colo. Air Pollution Control Comm'n*, 199 Colo. 270, 610 P.2d 85 (1980).

25-7-109.1. Emergency rule-making.

In addition to all other powers of the commission, the commission, pursuant to section 24-4-103 (6), C.R.S., shall have the authority to conduct emergency rule-making for the purpose of adopting an interim emission control regulation to apply for a specified period of time in place of an existing emission control regulation or to create an emission control regulation whenever federal regulations have been adopted and become effective pursuant to section 111 of the federal act and which add to the list of categories of stationary sources, or add new or more restrictive standards of performance for new sources, or whenever federal regulations are adopted and effective pursuant to section 112 of the federal act and which modify or adopt MACT or GACT for new or existing sources, and such regulations are required to be implemented by the states. Interim emission control regulations adopted pursuant to this section shall not be effective for a period greater than twelve months from the date of adoption.

Source: L. 92: Entire section added, p. 1178, 13, effective July 1.

25-7-109.2. Small business stationary source technical and environmental compliance assistance program - repeal.

(1) The commission shall promulgate such rules, regulations, and procedures as are necessary to establish and administer the Colorado small business stationary source technical and environmental compliance assistance program consistent with the requirements of the federal act.

(2) There is hereby created a compliance advisory panel, which shall:

(a) Render advisory opinions concerning the effectiveness of the small business stationary source technical and environmental compliance assistance program, difficulties encountered, degree of enforcement, and severity of penalties;

(b) Make periodic reports to the governor and the administrator of the United States environmental protection agency;

(c) Review information for small business stationary sources to assure such information is understandable by the layperson; and

(d) Advise the small business stationary source technical and environmental compliance assistance program, which shall serve as the secretariat for the development and dissemination of such reports and advisory opinions.

(3) The panel shall consist of:

(a) Two members who are not owners or representatives of owners of small business stationary sources, appointed by the governor to represent the general public;

(b) Two members who are owners or who represent owners of small business stationary sources, one appointed by the speaker of the house of representatives and one appointed by the minority leader of the house of representatives;

(c) Two members who are owners or who represent owners of small business stationary sources, one appointed by the president of the senate and one appointed by the minority leader of the senate; and

(d) One member appointed by the executive director of the department of public health and environment to represent such department.

(4) The terms of those members of the panel initially appointed by the governor, the speaker of the house of representatives, and the minority leader of the house of representatives shall expire on January 31, 1994. The terms of those members initially appointed by the president of the senate, the minority leader of the senate, and the executive director of the department of public health and environment shall expire on January 31, 1995. Thereafter, members of the panel shall serve for terms of three years, such terms to commence on February 1 of the year of appointment. Vacancies occurring during the term of office of any member of the panel shall be filled for the unexpired portion of the regular term in the same manner as for the original appointment.

(5) In furtherance of the small business stationary source technical and environmental compliance assistance program established as provided in subsection (1) of this section, the department of public health and environment shall serve as ombudsman for small business stationary sources. The department shall carry out the ombudsman duties using personnel outside of the air pollution control division.

(6) The general assembly finds, determines, and declares that this section is enacted for purposes of compliance with the provisions of section 507 of the federal act, 42 U.S.C. sec. 7661f. Subsections (2), (3), and (4) of this section and this subsection (6) are repealed, effective September 1, 2026. Prior to said repeal, the compliance advisory panel shall be reviewed by a legislative committee of reference, designated pursuant to section [2-3-1201](#), C.R.S., to conduct the review pursuant to section [2-3-1203](#), C.R.S.

Source: L. 92: Entire section added, p. 1161, 3, effective July 1; entire section added, p. 1178, 13, effective July 1. **L. 94:** (3)(d) amended, p. 2782, 498, effective July 1. **L. 96:** (6) amended, p. 798, 12, effective May 23; (5) amended, p. 845, 1, effective July 1, 1997. **L. 98:** (6) amended, p.

76, 1, effective March 23. **L. 2004:** (6) amended, p. 349, 16, effective July 1. **L. 2005:** (6) amended, p. 155, 1, effective April 5. **L. 2015:** (2)(d), (4), and (6) amended, (SB 15-103), ch. 74, p. 196, 2, effective July 1.

Editor's note: Amendments to this section by Senate Bill 92-97 and Senate Bill 92-105 were harmonized.

Cross references: For the legislative declaration contained in the 1994 act amending subsection (3)(d), see section 1 of chapter 345, Session Laws of Colorado 1994.

25-7-109.3. Colorado hazardous air pollutant control and reduction program - rules.

(1) The commission shall promulgate appropriate regulations pertaining to hazardous air pollutants as defined in section [25-7-103](#) (13) which are consistent with this section and the requirements of and emission standards promulgated pursuant to section 112 of the federal act, including any standard required to be imposed under section 112(r) of the federal act. The commission shall monitor the progress and results of the risk studies performed under section 112 of the federal act to show that Colorado's hazardous air pollutant control and reduction program is consistent with the national strategy.

(2) The commission may only promulgate regulations pertaining to hazardous air pollutants as defined in section [25-7-103](#) (13) in accordance with this section. In order to minimize additional regulatory and compliance costs to the state's economy, any program created by the commission pursuant to this section shall contain a provision which exempts those sources or categories of sources which it determines to be of minor significance from the requirements of the program. Consistent with the provisions of section [25-7-105.1](#), the commission shall authorize synthetic minor sources of hazardous air pollutants by the issuance of construction permits or prohibitory rules or other regulations. Such permits, rules, or regulations shall only be as stringent as necessary to establish synthetic minor status. The commission shall expeditiously implement this subsection (2) to assure that all sources may be able to timely qualify as a synthetic minor source, thereby avoiding the costs of the operating permit program.

(3) (a) (I) As soon as adequate scientific, technological, and hazardous air pollutant emissions information is available, the commission may promulgate regulations for the control of hazardous air pollutants utilizing Colorado GACT or Colorado MACT technology-based emission reduction requirements, as defined in section [25-7-103](#) (6.7) and (6.8).

(II) The division may establish schedules of compliance of up to five years leading to final compliance for any such regulation, which shall be enforced through regulations or conditions in construction permits issued pursuant to section [25-7-114.2](#) or [25-7-114.5](#). In determining any schedule of compliance, the division shall consider the current availability of technology, costs of compliance, and the consequence of delay to the public health or environment or economy.

(III) The division shall issue its determination of Colorado GACT or Colorado MACT and the compliance schedule in writing.

(IV) Within thirty calendar days after receipt of a determination by the division requiring installation of Colorado GACT or Colorado MACT and the compliance schedule, pursuant to this subsection (3), a source may appeal such a determination or compliance schedule by filing with the commission a written petition requesting a hearing to review the determination on a de novo basis.

(V) Such hearing shall allow the parties to present evidence and argument on all issues and to conduct cross-examination required for full disclosure of the facts and shall otherwise be conducted in accordance with section 25-7-119.

(b) This section shall only apply to sources emitting a hazardous air pollutant identified in the list established or amended pursuant to subsection (5) of this section which:

(I) Are not included in categories or subcategories of sources listed or proposed to be listed by the environmental protection agency under section 112 of the federal act and thus will not be required to comply with GACT or MACT under the federal act, as defined in section 25-7-103 (12.1) and (16.5); or

(II) Are included in categories or subcategories of sources listed or proposed to be listed under section 112 of the federal act and which have:

(A) Levels of emissions of hazardous air pollutants listed under section 112 (b) of the federal act which are below thresholds established under the federal act and thus will not be required to comply with GACT and MACT under the federal act and as defined in section 25-7-103 (12.1) and (16.5); except that this section shall not apply to a source included in a category or subcategory for which a lesser quantity emission rate has been proposed or adopted under section 112 of the federal act; or

(B) Hazardous air pollutant emissions above a threshold level of the substance listed under subparagraph (II) of paragraph (a) and paragraph (b) of subsection (5) of this section.

(b.1) The commission and the air quality science advisory board may recognize similarities among regulated sources or apply, when appropriate, previous control requirements established by the commission in making a determination about the need for such regulation under this subsection (3). The commission and the science advisory board shall also consider fundamentally different factors between sources in making these determinations.

(c) The commission shall designate by regulation those classes of minor or insignificant sources of emissions of hazardous air pollutants which are exempt from the requirements of this section because their emissions of hazardous air pollutants will result in an inconsequential risk to public health.

(d) (I) A source subject to the requirements of this section may be exempt from installation of Colorado MACT or Colorado GACT or any Colorado health-based requirement if the division makes a determination that an alternative level of control, including no emission controls, will result in an inconsequential risk to public health.

(II) The division shall issue its determination of a source's request for exemption under this paragraph (d) in writing within sixty days of receipt of a complete application for an exemption and shall publish notice of its determination by at least one publication in a newspaper of general distribution in the area of the source requesting the exemption.

(III) Within thirty calendar days after receipt of a determination by the division of a request for exemption by a source under this paragraph (d), the source or any person may appeal such determination by filing with the commission a written petition requesting a hearing to review the exemption request on a de novo basis. Such request shall be referred to the air quality science advisory board for an advisory opinion which shall be considered by the commission.

(IV) Such hearing shall allow the parties to present evidence and argument on all issues and to conduct cross-examination required for full disclosure of the facts and shall otherwise be conducted in accordance with section [25-7-119](#).

(e) Any source as defined in section 112(i) of the federal act, and regulations promulgated thereunder, that participates in the early reduction program pursuant to section 112(i) of the federal act, or this article, shall be exempt from the requirements of this section for the same period of time exemptions from federal requirements or requirements under this article are allowed under the early reduction program.

(f) This section shall not apply to sources subject to national emission standards for hazardous air pollutants (NESHAP) established by the administrator pursuant to the federal act, but only for those emissions for which a NESHAP is established.

(g) This section shall not impose requirements on sources included in categories or subcategories of sources which are listed in section 112(n) of the federal act which are inconsistent with the timing of studies or assessments conducted under or definitions set forth in section 112(n) of the federal act.

(4) (a) (I) On or after the risk-based studies required under section 112(k)(3), 112(o), and 112(f) of the federal act are completed and received by the commission, the commission may adopt regulations pertaining to those sources identified as emitting hazardous air pollutants regulated under this section which may include additional emission reduction requirements to address any residual risk of health effects with respect to actual persons living in the vicinity of sources after installation of technology-based controls. Imposition of such requirements may be made upon a determination by the commission that operation of sources without health-based controls does not or will not represent an inconsequential threat to public health. Regulations as finally adopted pursuant to this subsection (4) may apply on a source-specific basis.

(II) However, if in 1996 the commission determines that the studies referred to in subparagraph (I) of this paragraph (a) and national strategy will not be timely or completed, then the commission shall direct the science advisory board to evaluate or complete similar studies and issue an advisory report to the commission and the commission may then act pursuant to this subsection (4).

(b) In issuing the advisory report, the air quality science advisory board shall take into consideration any studies or reports on health-based assessments which are scientifically sound, including any developed under section 112(k)(3), 112(o), and 112(f) of the federal act.

(c) Subject to paragraph (a) of this subsection (4), for existing sources not subject to regulation under section [25-7-114.3](#), or not subject to regulation as a modified source, the commission may promulgate health-based regulations on a source-by-source basis, with the exceptions specified in paragraph (d) of this subsection (4).

(d) The commission and the air quality science advisory board may recognize similarities among regulated sources or apply, when appropriate, previous control requirements established by the commission pursuant to paragraph (a) of this subsection (4) in making a determination about the need for such regulation under this subsection (4). The commission and the air quality science advisory board shall also consider fundamentally different factors between sources in making these determinations.

(e) The commission may establish schedules of compliance leading to final compliance for any regulation promulgated pursuant to this subsection (4).

(f) A hearing conducted by the commission under this subsection (4) shall be conducted in accordance with section 25-7-110 or 25-7-119 or article 4 of title 24, C.R.S., as applicable.

(g) In reaching a determination under this subsection (4), the commission shall give consideration to the technical availability of methods of compliance, the costs of compliance, and the consequences of delay. The commission shall also consider cost-benefit analysis and risk-benefit analysis pursuant to section 24-4-103 (4.5), C.R.S.

(h) Temporary exceptional authority. (I) (A) This subparagraph (I) shall apply until such time as the commission is authorized to act pursuant to paragraph (a) of this subsection (4). If the executive director of the department of public health and environment finds that a source in a category or subcategory of sources listed or proposed to be listed under section 112 of the federal act for which MACT or GACT is not scheduled for proposal until after 1997 and presents an unacceptable threat of actual health effects, then the executive director may direct the commission to evaluate and, as necessary, study such actual health effects. The commission may request the air quality science advisory board to evaluate and, as necessary, study whether the impacts of waiting to regulate the emissions of hazardous air pollutants from this source present an unacceptable threat of actual health effects. If, after considering an advisory opinion issued by the board and other available information, the commission finds by a preponderance of the evidence that waiting until the source would be required to install GACT or MACT under section 112 of the federal act will cause an unacceptable incremental threat of actual health effects to persons living in the vicinity of such source, the commission may promulgate regulations for the control of hazardous air pollutants for the source. The control regulations may include the least restrictive control that will adequately protect the public, including but not limited to: Chemical substitution, pollution prevention, work process modifications, additional control technologies, or Colorado MACT or GACT. In promulgating Colorado GACT or MACT for the source, the commission shall consider and be as consistent as possible with GACT or MACT under section 112 of the federal act, minimization of duplicative capital expenditures and minimization of substantial reconstruction time. The commission shall provide a schedule of compliance leading to final compliance which considers matters identified in paragraphs (b), (c), (e), (f), and (g) of this subsection (4).

(B) Any source which is required to install Colorado MACT or GACT under regulations promulgated pursuant to sub-subparagraph (A) of this subparagraph (I) only and which subsequently is required to install federal MACT or GACT that is significantly different than Colorado MACT or GACT and imposes a significant capital cost on the source, then the general assembly shall study and consider whether an operating permit fee credit or a state tax credit for the capital costs, or a percentage of the costs, is appropriate.

(II) Until such time as the commission is authorized to act pursuant to paragraph (a) of this subsection (4) and upon the recommendation of the executive director of the department of public health and environment, the governor may find, as expressed in an executive order, that after an existing source has installed Colorado or federal MACT or GACT, or Colorado MACT or GACT has been proposed for a new source or a modification of an existing source, the source presents an unacceptable threat of actual health effects. The governor may then direct the commission to evaluate and, as necessary, conduct studies on actual health effects. The

commission shall then direct the air quality science advisory board to render an advisory opinion on such information and on whether, after technology-based controls have been installed, emissions of hazardous air pollutants from this source will cause actual health effects to persons in the vicinity of such source. If the commission, after reviewing the advisory opinion, determines by a preponderance of the evidence that emissions of hazardous air pollutants by the source will cause an unacceptable threat of actual health effects to persons living in the vicinity of such source, the commission may then promulgate additional technology-based control regulations, pollution prevention, or health-based measures to protect the public health. The commission shall provide a schedule of compliance leading to final compliance which considers matters identified in paragraphs (b), (c), (e), (f), and (g) of this subsection (4).

(III) This paragraph (h) shall remain effective only until such time as the commission acts pursuant to its authority under paragraph (a) of this subsection (4).

(5) (a) The substances listed in or pursuant to section 112(b) of the federal act, and the following substances, are declared to be hazardous air pollutants and are subject to regulation by the commission under this section:

	Chemical Abstract Service Number	Chemical
(I)	50-18-0	Cyclophosphamide
(II)	50-32-8	Benzo(a)pyrene
(III)	52-24-4	Tris(aziridinyl)-phosphine sulfide
(IV)	52-24-4	Thio-tepa
(V)	53-70-3	Dibenz[a,h]anthracene
(VI)	55-98-1	1,4-butanediol dimethanesulphonate
(VII)	56-53-1	Dirthylstulresterol
(VIII)	56-55-3	Benz[a]anthracene
(IX)	70-25-7	N-methyl-n-nitro-n-nitrosoguanidine
(X)	78-98-8	Methylglyoxol
(XI)	115-28-6	Chlorendic acid
(XII)	117-10-2	Chrysazin
(XIII)	122-60-1	Phenyl glycidyl ether
(XIV)	132-27-4	2-biphenylol sodium salt
(XV)	154-93-8	Bischloroethyl nitrosoourea
(XVI)	298-81-7	8-methoxyypsoralen
(XVII)	299-75-2	Treosulphan
(XVIII)	305-03-3	Clorambucil
(XIX)	370-67-2	Azactidine
(XX)	366-70-1	Procarbazine hydrochloride
(XXI)	446-86-6	Azathioprine
(XXII)	484-20-8	5-methoxyypsoralen
(XXIII)	494-03-1	Chlornaphazine
(XXIV)	590-96-5	Methanol, (methyl-onn-azoxy)
(XXV)	607-57-8	2-nitrofluorene
(XXVI)	615-53-2	N-nitroso-n-methylurethane
(XXVII)	817-09-4	Trichlormethine
(XXVIII)	1188-47-2	Nitrilotriacetic acid, copper(2+)salt(1:1)
(XXIX)	1188-48-3	Nitrilotriacetic acid, magnesium salt(1:1)
(XXX)	1309-64-4	Antimony oxide
(XXXI)	1317-98-2	Valentinite
(XXXII)	1402-68-2	Aflatoxins
(XXXIII)	2399-81-7	Nitrilotriacetic acid, beryllium salt(1:1)
(XXXIV)	2399-83-9	Nitrilotriacetic acid,

barium salt(1:1)

(XXXV) 2399-85-1 Nitriлотriacetic acid,
tripotassium salt

(XXXVI) 2399-86-2 Nitriлотriacetic acid,
dipotassium salt

(XXXVII) 2399-87-3 Nitriлотriacetic acid,
beryllium potassium salt(1:1)

(XXXVIII) 2399-88-4 Nitriлотriacetic acid,
potassium magnesium salt(1:1:1)

(XXXIX) 2399-89-5 Nitriлотriacetic acid,
potassium strontium salt(1:1:1)

(XL) 2399-94-2 Nitriлотriacetic acid,
calcium salt(1:1)

(XLI) 2455-08-5 Nitriлотriacetic acid,
calcium potassium salt(1:1:1)

(XLII) 2475-45-8 Disperse blue 1

(XLIII) 2646-17-5 C1 solvent orange2

(XLIV) 3130-95-8 Nitriлотriacetic acid,
scandium (3+) salt (1:1)

(XLV) 3438-06-0 Nitriлотriacetic acid,
neodymium (3+) salt (1:1)

(XLVI) 5064-31-3 Nitriлотriacetic acid,
trisodium salt

(XLVII) 5522-43-0 1-nitropyrene

(XLVIII) 5798-43-6 Nitriлотriacetic acid,
disodium salt, compound
with oxo (dihydrogen nit)

(XLIX) 7496-02-8 6-nitrochrysene

(L) 10042-84-9 Nitriлотriacetic acid,
sodium salt (unspecified)

(LI) 10043-92-2 Radon decay products

(LII) 10413-71-5 Nitriлотriacetic acid,
erbium(3+) salt (3:1)

(LIII) 12412-52-1 Senarmontite

(LIV) 12510-42-8 Erionite

(LV) 13010-47-4 1-(2-chloroethyl)-3-
cyclohexyl-1-nitrosourea

(LVI) 13909-09-6 1,(2-chloroethyl)-3-(4
methyl-cyclohexyl)-1
nitrosourea

(LVII) 14695-88-6 Nitriлотriacetic acid,
compound with iron
chloride, as /fecl3/

(LVIII) 14807-96-6 Talc (containing
asbestos fibers)

(LIX) 14981-08-9 Nitriлотriacetic acid,
calcium salt

(LX) 15414-25-2 Nitriлотriacetic acid,
yttrium (3+) salt (1:1)

(LXI) 15467-20-6 Nitriлотriacetic acid,
disodium salt

(LXII) 15663-27-1 Cisplatin

(LXIII) 15844-52-7 Nitriлотriacetic acid,
copper (2+) complex

(LXIV) 15934-02-8 Nitriлотriacetic acid,
monoammonium salt

(LXV) 16448-54-7 Nitriлотriacetic acid,
iron (3+) complex

(LXVI) 16568-02-8 Gyromitrin

(LXVII) 18105-03-8 Nitriлотriacetic acid,
mercury (2+) salt (2:3)

(LXVIII) 18432-54-7 Nitriлотriacetic acid,

cadmium (2+) complex
 (LXIX) 18540-29-9 Chromium compounds,
 hexavalent
 (LXX) 18662-53-8 Nitriлотriacetic acid,
 trisodium salt monohydrate
 (LXXI) 18946-94-6 Nitriлотriacetic acid,
 neodymium (3+) salt (1:1)
 (LXXII) 18983-72-7 Nitriлотriacetic acid,
 beryllium potassium salt (1:1)
 (LXXIII) 18994-66-6 Nitriлотriacetic acid,
 monosodium salt
 (LXXIV) 19010-73-2 Nitriлотriacetic acid,
 aluminium (3+) complex

 (LXXV) 19456-58-7 Nitriлотriacetic acid,
 indium (3+) complex
 (LXXVI) 22965-60-2 Nitriлотriacetic acid,
 nickel (3+) complex
 (LXXVII) 23214-92-8 Adrianmycin
 (LXXVIII) 23255-03-0 Nitriлотriacetic acid,
 disodium salt, monohydrate
 (LXXIX) 23319-51-9 Nitriлотriacetic acid,
 cobalt (3+) complex
 (LXXX) 23555-96-6 Nitriлотriacetic acid,
 potassium strontium salt
 (2:4:1)
 (LXXXI) 23555-98-8 Nitriлотriacetic acid,
 calcium potassium salt
 (2:1:4)
 (LXXXII) 25817-24-7 Nitriлотriacetic acid,
 potassium salt
 (LXXXIII) 28444-53-3 Nitriлотriacetic acid,
 monopotassium salt
 (LXXXIV) 28027-38-0 Nitriлотriacetic acid,
 holmium salt
 (LXXXV) 29027-90-5 Nitriлотriacetic acid,
 cerium salt
 (LXXXVI) 29507-58-2 Nitriлотriacetic acid,
 zinc (3+) complex sodium salt
 (LXXXVII) 32685-17-9 Nitriлотriacetic acid,
 triammonium salt
 (LXXXVIII) 34831-02-2 Nitriлотriacetic acid,
 copper (2+) hydrogen complex
 (LXXXIX) 34831-03-3 Nitriлотriacetic acid,
 nickel (2+) hydrogen
 complex
 (XC) 36711-58-7 Nitriлотriacetic acid,
 manganese salt
 (XCI) 42397-64-8 1,6-dinitropyrene
 (XCII) 42397-65-9 1,8-dinitropyrene
 (XCIII) 46242-44-8 Nitriлотriacetic acid,
 antimony (3+) complex
 (XCIV) 50618-02-7 Nitriлотriacetic acid,
 tricadium (2+) complex
 (XCV) 53108-47-7 Nitriлотriacetic acid,
 copper (2+) complex sodium
 salt
 (XCVI) 53108-50-2 Nitriлотriacetic acid,
 cobalt (3+) hydrogen
 complex
 (XCVII) 53818-84-1 Nitriлотriacetic acid,
 tin (2+) salt
 (XCVIII) 54749-90-5 Chlorozotocin

(XCIX) 57835-92-4 4-nitropyrene
(C) 59865-13-3 Cyclosporin A
(CI) 60034-45-9 Nitriлотriacetic acid,
calcium sodium salt
(1:1:1)
(CII) 60153-49-3 3-(n-nitrosomethylamino)
propionitrile

(CIII) 61017-62-7 Nitriлотriacetic acid,
iron (2+) complex sodium
salt (1:1:1)
(CIV) 62450-06-0 trp-p-1
(CV) 62450-07-1 trp-p-2
(CVI) 64091-91-4 Ketone, 3-pyridyl3-
(n-methyl-n-nitrosoamino)
propyl
(CVII) 67730-10-3 2-aminodipyrido[1,2-a3,2-
d]imidazole
(CVIII) 66730-11-4 2-amino-6-
methyldipyrido[1,2-a3,2-
d]imidazole
(CIX) 68006-83-7 2-amino-3-methyl-
9h-pyrido[2,3-b]indole
(CX) 69679-89-6 Nitriлотriacetic acid,
calcium salt (2:3)
(CXI) 71484-80-5 Nitriлотriacetic acid,
copper (2+) complex
ammonium salt
(CXII) 72629-49-3 Nitriлотriacetic acid,
dilithium salt
(CXIII) 73772-91-5 Nitriлотriacetic acid,
magnesium salt
(CXIV) 76180-96-6 2-amino-3-
methylimadazo[4,5-
f]quinoline
(CXV) 79217-60-0 Cyclosporine
(CXVI) 79849-02-8 Nitriлотriacetic acid,
lead (2+) salt (1:1)
(CXVII) 79915-08-5 Nitriлотriacetic acid,
lead (2+) potassium salt
(1:1:1)
(CXVIII) 79915-09-6 Nitriлотriacetic acid,
lead (2+) salt (2:3)
(CXIX) 80508-23-2 N-nitrosornicotine
(CXX) 86892-89-9 Nitriлотriacetic acid,
disodium ammonium salt
(CXXI) 92474-39-0 Nitriлотriacetic acid,
trisilver salt
(CXXII) 92988-11-9 Nitriлотriacetic acid,
strontium sodium salt
(CXXIII) 108171-26-2 Chlorinated paraffins
(c12, 60% chlorine)
(CXXIV) 309-00-2 Aldrin
(CXXV) 60-57-1 Dieldrin
(CXXVI) 55-18-5 N-nitrosodiethylamine
(CXXVII) 319-84-6 L-hexachlorocyclohexane
(CXXVIII) 608-73-1 Hexachlorocyclohexane-tech
(CXXIX) 7644-41-0 1,4 dichloro-2-butene
(CXXX) 924-16-3 N-nitroso-d-n-butyl-amine

(b) The commission may promulgate a regulation which amends by adding to, or deleting from, the list of hazardous air pollutants subject to regulation under this section within the state

which are not listed as hazardous air pollutants under the federal act. In amending the list of hazardous air pollutants in paragraph (a) of this subsection (5), the commission shall utilize the same standards and criteria which section 112 of the federal act requires the administrator to utilize in amending the list of hazardous air pollutants under the federal act. The commission shall refer any such proposed amendment to the air quality science advisory board for an advisory opinion prior to conducting a proceeding under this paragraph (b).

(c) The commission shall by regulation establish de minimis emission levels for each hazardous air pollutant beneath which levels emissions are considered to be of minor significance.

(d) The rule-making authorized under paragraphs (b) and (c) of this subsection (5) shall include a hearing to allow the parties to present evidence and argument on all issues and to conduct cross-examination required for full disclosure of the facts and shall otherwise be conducted in accordance with section [25-7-119](#).

(e) Proceedings of the commission to amend the list of hazardous air pollutants under paragraph (b) of this subsection (5) shall be conducted on a substance-by-substance basis and there shall not be a consolidation of proceedings wherein more than five substances are considered for listing as a hazardous air pollutant in one proceeding.

Source: **L. 92:** Entire section added, p. 1180, 13, effective July 1. **L. 94:** (2) amended, p. 1419, 2, effective May 25; (4)(h)(I)(A) and (4)(h)(II) amended, p. 2782, 499, effective July 1. **L. 96:** (1) amended, p. 1257, 150, effective August 7.

Cross references: For the legislative declaration contained in the 1994 act amending subsections (4)(h)(I)(A) and (4)(h)(II), see section 1 of chapter 345, Session Laws of Colorado 1994. For the legislative declaration contained in the 1996 act amending this section, see section 1 of chapter 237, Session Laws of Colorado 1996.

ANNOTATION

Law reviews. For article, "Colorado's New Clean Air Program", see 22 Colo. Law. 541 (1993).

25-7-109.4. Air quality science advisory board - created - repeal. (Repealed)

Source: **L. 92:** Entire section added, p. 1191, 13, effective July 1. **L. 98:** (10)(a) amended, p. 169, 1, effective April 6.

Editor's note: Subsection (10)(a) provided for the repeal of this section, effective July 1, 2008. (See L. 98, p. 169.)

25-7-109.6. Accidental release prevention program.

(1) The commission may promulgate such rules, regulations, and procedures as are necessary to establish and implement an accidental release prevention program consistent with and no sooner than the requirements of section 112 (r) of the federal act, including release prevention, detection, and correction requirements which may include monitoring, record-keeping, reporting, training, vapor recovery, secondary containment, and other design, equipment, work practice, and operational requirements.

(2) For purposes of this section:

(a) "Accidental release" means an unanticipated emission of a regulated substance or other extremely hazardous substance, defined pursuant to the federal act, into the ambient air from a stationary source;

(b) "Regulated substance" means those substances listed by the administrator pursuant to section 112 (r) (3) of the federal act;

(c) "Stationary source" means any buildings, structures, equipment, installations, or substance emitting stationary activities:

(I) Which belong to the same industrial group;

(II) Which are located on one or more contiguous properties;

(III) Which are under the control of the same person (or persons under common control); and

(IV) From which an accidental release may occur.

(d) "Threshold quantity" shall have the same meaning as defined in section 112 (r) of the federal act.

(3) As appropriate, rules, regulations, and procedures promulgated pursuant to this section shall:

(a) Consider the use, operation, repair, replacement, and maintenance of equipment to monitor, detect, inspect, and control such releases, including training of persons in the use and maintenance of such equipment and the conduct of periodic inspections;

(b) Include procedures and measures for emergency response after an accidental release of a regulated substance in order to protect human health and the environment;

(c) Cover storage, as well as operations;

(d) As appropriate, recognize differences in size, operations, processes, classes, and categories of sources and the voluntary actions of such sources to prevent accidental releases and respond to such releases;

(e) Require the owner or operator of stationary sources at which a threshold quantity of a regulated substance is present to prepare and implement a risk management plan to detect and prevent or minimize accidental releases of such substances from the stationary source, and to provide a prompt emergency response to any such releases in order to protect human health and the environment. Such plan shall provide for compliance with the requirements of this subsection (3) and shall also include each of the following:

(I) A hazard assessment, to be updated periodically and registered with the division, the United States environmental protection agency, and other appropriate local agencies, to assess the potential effects of an accidental release of any regulated substance;

(II) A program for preventing accidental releases of regulated substances, including safety precautions and maintenance, monitoring, and employee training measures to be used at the sources; and

(III) A response program providing for specific actions to be taken in response to an accidental release of a regulated substance so as to protect human health and the environment, including

procedures for informing the public and local agencies responsible for responding to accidental releases, emergency health care, and employee training measures.

(f) Coordinate notification, reporting, and response requirements between federal, state, and local agencies to avoid duplicate notification and reporting requirements and to integrate emergency response plans.

(4) In addition to any other action taken, when the division determines that there may be an imminent and substantial endangerment to the human health or welfare or the environment because of an actual or threatened accidental release of a regulated substance, the division may take action pursuant to section 25-7-112 and 25-7-113.

(5) The implementation and effectiveness of this section shall be contingent on the receipt of funding from the federal government in sufficient amount to totally fund the division's costs in implementing this section; except that the small business stationary source technical and environmental compliance assistance program shall be funded as provided in section 25-7-114.7.

Source: L. 92: Entire section added, p. 1195, 13, effective July 1.

25-7-110. Commission - procedures to be followed in setting standards and regulations.

(1) Prior to adopting, promulgating, amending, or modifying any ambient air quality standard authorized in section 25-7-108, or any emission control regulation authorized in section 25-7-109, or any other regulatory plans or programs authorized by section 25-7-105 (1) (c) or 25-7-106, the commission shall conduct a public hearing thereon as provided in section 24-4-103, C.R.S. Notice of any such hearing shall conform to the requirements of section 24-4-103, C.R.S., but such notice shall be given at least sixty days prior to the hearing, and shall include each proposed regulation, and shall be mailed to all persons who have filed with the commission a written request to receive such notices.

(2) Any person desiring to propose a regulation differing from the regulation proposed by the commission or to propose a revision of limited applicability, pursuant to section 25-7-117, to the commission's proposal shall file such other proposal with the commission not less than twenty days prior to the hearing, and, when on file, such proposal shall be open for public inspection.

(3) Witnesses at the hearing shall be subject to cross-examination by or on behalf of the commission and by or on behalf of persons who have proposed regulations pursuant to subsection (2) of this section.

(4) Rules and regulations promulgated pursuant to this article shall not take effect until after they have been published in accordance with section 24-4-103, C.R.S., or on such later date as is stated in such rules and regulations.

Source: L. 79: Entire article R&RE, p. 1027, 1, effective June 20.

ANNOTATION

Law reviews. For comment, "Environmental Law -- Requirement of Notice in Visual Opacity Readings -- Air Pollution Variance Bd. v. Western Alfalfa Corp., 94 S. Ct. 2114 (1974)", see 51 Den. L.J. 603 (1974).

25-7-110.5. Required analysis of proposed air quality rules.

(1) In addition to the requirements of section 25-7-110.8, whenever the commission proposes a rule, the technical secretary of the commission shall provide to the public upon request at cost, at the time the notice for public rule-making is published, a proposed rule-making packet containing:

(a) A memorandum of notice, as required by subsection (3) of this section;

(b) The actual language of the proposed rule;

(c) A statement describing the fiscal and economic impact of the proposed rule, as required by subsection (4) of this section;

(d) A statement describing the potential justification for terms differing from federal requirements, as required by subsection (5) of this section;

(e) On or before July 1, 1997, a statement describing the risk analysis, if required by the general assembly under subsection (6) of this section;

(f) The range of regulatory alternatives, including the no-action alternative, to be considered in adopting the proposed rule; and

(g) Any other concise background material that would assist the interested and affected public in understanding the impact of the proposed rule.

(1.5) As used in this section, "rule" includes an amendment to an existing rule.

(2) The requirements of subsections (1) (c) to (1) (f), (3) (g), and (4) of this section shall not apply to any rule-making packet for any commission rule, and the requirements of subsections (3) (g) and (4) of this section shall not apply to any commission rule, which adopts by reference applicable federal rules or which rule is adopted to implement prescriptive state statutory requirements, where the commission is allowed no significant policy-making options, or which rule will have no regulatory impact on any person, facility, or activity.

(3) Whenever the commission proposes a rule, the technical secretary of the commission, in cooperation with the proponent of the rule, shall provide a memorandum of notice containing:

(a) An explanation of the proposed rule;

(b) A disclosure of materials contained in the proposed rule;

(c) A preliminary plan for meetings with the commission staff on the proposed rule;

(d) An explanation of the problem sought to be remedied by the proposed rule;

(e) An analysis of how the proposed rule solves the problem delineated in paragraph (d) of this subsection (3);

(f) An explanation of the process that was used to develop the proposed rule;

(g) An initial analysis of the economic effects of the proposed rule pursuant to subsection (4) of this section;

(h) An explanation of the substantive differences with federal requirements and the requirements of Utah, Arizona, and New Mexico, where relevant;

(i) An explanation of how the proposed rule may be implemented;

(j) Whether there will be any time constraints on the regulated community and state agencies as a result of implementation or a delay in implementation of the proposed rule;

(k) A contact person or persons who may provide additional information on the proposed rule to interested persons; and

(l) A no-action analysis.

(4) (a) Before any permanent rule is proposed pursuant to this section, an initial economic impact analysis shall be conducted in compliance with this subsection (4) of the proposed rule or alternative proposed rules. Such economic impact analysis shall be in writing, developed by the proponent, or the division in cooperation with the proponent and made available to the public at the time any request for hearing on a proposed rule is heard by the commission. A final economic impact analysis shall be in writing and delivered to the technical secretary and to all parties of record five working days prior to the prehearing conference or, if no prehearing conference is scheduled, at least ten working days before the date of the rule-making hearing. The proponent of an alternative proposal will provide, in cooperation with the division, a final economic impact analysis five working days prior to the prehearing conference. The economic impact analyses shall be based upon reasonably available data. Except where data is not reasonably available, or as otherwise provided in this section, the failure to provide an economic impact analysis of any noticed proposed rule or any alternative proposed rule will preclude such proposed rule or alternative proposed rule from being considered by the commission. Nothing in this section shall be construed to restrict the commission's authority to consider alternative proposals and alternative economic impact analyses that have not been submitted prior to the prehearing conference for good cause shown and so long as parties have adequate time to review them.

(b) Before any emergency rule is adopted, any person may request that a regulatory analysis, as defined in section [24-4-103](#) (4.5), C.R.S., be prepared and made available to the public five working days prior to the hearing, unless there is an imminent and serious hazard to health, welfare, or the environment.

(c) The proponent and the division shall select one or more of the following economic impact analyses. The commission may ask affected industry to submit information with regard to the cost of compliance with the proposed rule, and, if it is not provided, it shall not be considered reasonably available. The economic impact analysis required by this subsection (4) shall be based upon reasonably available data and shall consist of one or more of the following:

(I) Cost-effectiveness analyses for air pollution control that identify:

(A) The cumulative cost including but not limited to the total capital, operation, and maintenance costs of any proposed controls for affected business entity or industry to comply with the provisions of the proposal;

(B) Any direct costs to be incurred by the general public to comply with the provisions of the proposal;

(C) Air pollution reductions caused by the proposal;

(D) The cost per unit of air pollution reductions caused by the proposal; and

(E) The cost for the division to implement the provisions of the proposal; or

(II) Industry studies that examine the direct costs of the proposal on directly affected entities that may be either in the form of a business analysis (The regulatory impacts on the general business climate or subsets thereof) or an industry analysis (the regulatory impacts on specific industries), including:

(A) The characteristics and current economic conditions of the impacted business or industry sector; and

(B) The projected impacts on the growth of the affected industry sectors with and without implementation of the proposal; and

(C) How the proposal may effect or alter the growth of the affected industry sector; and

(D) The direct cost of the proposal on the affected industry sector; or

(III) An economic impact analysis that:

(A) Identifies the industrial and business sectors that will be impacted by the proposal; and

(B) Quantifies the direct cost to the primary affected business or industrial sector; and

(C) Incorporates an estimate of the economic impact of the proposal on the supporting business and industrial sectors associated with the primary affected business or industry sectors.

(d) Repealed.

(e) The economic impact analysis required by this subsection (4) shall not consist of an analysis of any nonmarket costs or external costs asserted to occur notwithstanding compliance by a source with applicable environmental regulations.

(5) (a) Whenever the commission proposes any rule that exceeds the requirements of the federal act or differs from the federal act or rules thereunder, the commission shall make available in writing a copy of any such proposed rule and a detailed, footnoted explanation of the differences between the rule and the federal requirements.

(b) The written explanation required pursuant to paragraph (a) of this subsection (5) shall contain an explanation of the following information:

(I) Any federal requirements that are applicable to this situation with a commentary on those requirements;

(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;

(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;

(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;

(V) Whether there is a timing issue which might justify changing the time frame 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;

(VII) Whether the proposed requirement establishes or maintains reasonable equity in the requirements for various sources;

(VIII) Whether others would face increased costs if a more stringent rule is not enacted;

(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;

(X) Whether demonstrated technology is available to comply with the proposed requirement;

(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; and

(XII) Whether an alternative rule, including a no-action alternative, would address the required standard.

(6) Repealed.

Source: **L. 95:** Entire section added, p. 1335, 2, effective July 1. **L. 96:** IP(1), IP(3), (4)(d), and (5)(a) amended and (1.5) added, p. 1285, 2, effective June 1. **L. 97:** (4)(d) amended, p. 526, 8, effective July 1. **L. 2001:** (4)(d) amended, p. 640, 1, effective May 30. **L. 2003:** (4)(d) amended, p. 843, 1, effective April 7. **L. 2009:** (4)(d) repealed, (HB 09-1332), ch. 318, p. 1707, 1, effective June 1.

Editor's note: Subsection (6)(e) provided for the repeal of subsection (6), effective July 1, 1997. (See L. 95, p. 1335.)

25-7-110.8. Additional requirements for commission to act under section 25-7-110.5.

(1) In issuing any final rule intended to reduce air pollution, except for any rule that adopts by reference applicable federal rules, if the commission has no discretion under state law not to adopt the rules or to adopt any alternative rule, the commission shall make a determination that:

(a) Any rule promulgated under section [25-7-110.5](#) is based on reasonably available, validated, reviewed, and sound scientific methodologies and that all validated, reviewed, and sound scientific methodologies and information made available by interested parties has been considered. Such review may include internal organizational review and not peer review.

(b) Evidence in the record supports the finding that the rule shall result in a demonstrable reduction in air pollution to be addressed by the rule unless such rule is administrative in nature;

(c) On and after July 1, 1997, and in conformance with guidance from the general assembly to incorporate the recommendations of the task force established in section [25-7-110.5](#) (6), evidence in the record supports the finding that the rule shall bring about reductions in risks to human health or the environment or provide other benefits that will justify the cost to government, the regulated community, and to the public to implement and comply with the rule;

(d) The commission shall choose an alternative that is the most cost-effective under the analysis required by section 25-7-110.5 (4), provides the regulated community flexibility, and which achieves the necessary reduction in air pollution. The commission may reject the most cost-effective alternative and shall provide findings of fact detailing why the most cost-effective alternative is unacceptable.

(e) The selection of the regulatory alternative by the commission will maximize the air quality benefits of regulation pursuant to this article in the most cost-effective manner. For purposes of the required analyses under this section, prior to the completion of the rule-making required pursuant to section 25-7-110.5, no benefit (except for air pollution reductions) can be attributed to regulating a facility already operating in compliance with a permit issued pursuant to applicable law.

(1.5) As used in this section, "rule" includes an amendment to an existing rule.

(2) In the event that the commission and division fail to reasonably comply with requirements of section 25-7-110.5 or this section, the rule shall be void and unenforceable. Judicial review of agency action under this section or section 25-7-110.5 may only be obtained by parties to the rule-making hearing and can only be brought regarding deficiencies or issues alleging a failure to comply with the requirements in section 25-7-110.5 or this section raised during or before the hearing to afford the commission, its staff, or interested parties an opportunity to address the deficiencies or issues raised.

Source: L. 95: Entire section added, p. 1335, 2, effective July 1. **L. 96:** IP(1) amended and (1.5) added, p. 1285, 3, effective June 1.

25-7-111. Administration of air quality control programs - directive - prescribed fire - review.

(1) The division shall administer and enforce the air quality control programs adopted by the commission. In furtherance of such responsibility of the division, the executive director of the department of public health and environment shall establish within the division a separate air quality control agency, the head of which shall be a licensed professional engineer or shall have a graduate degree in engineering or other specialty dealing with the problems of air quality control. Such person shall also have appropriate practical and administrative experience related to air quality control. Such person shall not be the technical secretary employed pursuant to section 25-7-105 (3). Any potential conflict of interest of such person shall be adequately disclosed prior to appointment and as may from time to time arise. All policies and procedures followed in the administration and enforcement of the air quality control programs that have been adopted by the commission shall be subject to supervision by the state board of health.

(2) In addition to authority specified elsewhere in this article, the division has the power to:

(a) Conduct or cause to be conducted studies and research with respect to air pollution and the control, abatement, or prevention thereof, as requested by the commission;

(b) Collect data, by means of field studies and air monitoring conducted by the division or by individual stationary sources or individual indirect air pollution sources, and determine the nature and quality of existing ambient air throughout the state;

(c) Enter and inspect any property, premises, or place for the purpose of investigating any actual, suspected, or potential source of air pollution or ascertaining compliance or noncompliance with any requirement of this article or any order or permit, or term or condition thereof, issued or promulgated pursuant to this article; and the division may, at reasonable times, have access to and copy any record, inspect any monitoring equipment or method, or sample any emissions required pursuant to section 25-7-106 (6) or part 5 of this article; except that, if such entry or inspection is denied or not consented to and no emergency exists, the division is empowered to and shall obtain from the district or county court for the district or county in which such property, premises, or place is located a warrant to enter and inspect any such property, premises, or place prior to entry and inspection. The district and county courts of this state are empowered to issue such warrants upon a proper showing of the need for such entry and inspection. Any information relating to secret processes or methods of manufacture or production obtained in the course of the inspection or investigation shall be kept confidential; except that emission data shall not be withheld from the division as confidential. A duplicate of any analytical report or observation of an air pollutant by the division shall be furnished promptly to the person who is suspected of causing such air pollution.

(d) Furnish technical advice and services relating to air pollution problems and control techniques;

(e) Inform the appropriate governmental agency of the results of atmospheric tests conducted in its jurisdiction and notify the affected city, town, county, or city and county whenever tests establish that the ambient air or source of emission of smoke or air pollution fails to meet the standards established under this article;

(f) Designate one or more persons or agencies in any area of the state as an air pollution control authority as agent of the division to exercise and perform such powers and duties of the division as may be specified in such designation;

(g) Furnish such personnel to the commission as the commission may reasonably require to carry out its duties and responsibilities under this article;

(h) Certify, or otherwise designate, to any other agency or department of this state or of any other state or of the federal government that any facility, land, building, machinery, or equipment, or any part thereof, has been constructed, erected, installed, or acquired in conformity with the requirements of this state or of this article for control of air pollution or in conformity with the requirements for control of air pollution of any other state or the federal government;

(i) Require any source to furnish information which the division may reasonably require relating to emissions of the source or to any investigation authorized by this article. If such request for information is refused, the division is empowered to and may obtain from the district or county court for the district or county in which the source is located a subpoena to compel production of such information.

(3) Repealed.

(4) The division shall assure that any information obtained by the division which is entitled to protection as a trade secret under federal or Colorado law is kept confidential and protected against disclosure, except as required by the federal act.

(5) Repealed.

Source: **L. 79:** Entire article R&RE, p. 1027, 1, effective June 20. **L. 84:** (2)(c) and (2)(g) amended, p. 769, 5, effective July 1. **L. 87:** (2)(c) amended, p. 1152, 4, effective July 1. **L. 92:** (2)(c) amended and (2)(i), (3), and (4) added, pp. 1197, 1293, 1198, 14, 3, 15, effective July 1. **L. 94:** (1) amended, p. 2783, 500, effective July 1. **L. 96:** (3) repealed, p. 1258, 153, effective August 7. **L. 2004:** (1) amended, p. 1311, 58, effective May 28. **L. 2009:** (5) added, (HB 09-1199), ch. 411, p. 2278, 4, effective June 3.

Editor's note: Subsection (5)(d) provided for the repeal of subsection (5), effective July 1, 2011. (See L. 2009, p. 2278.)

Cross references: For the legislative declaration contained in the 1994 act amending subsection (1), see section 1 of chapter 345, Session Laws of Colorado 1994. For the legislative declaration contained in the 1996 act repealing subsection (3), see section 1 of chapter 237, Session Laws of Colorado 1996.

ANNOTATION

Law reviews. For comment, "Environmental Law -- Requirement of Notice in Visual Opacity Readings -- Air Pollution Variance Bd. v. Western Alfalfa Corp., 94 S. Ct. 2114 (1974)", see 51 Den. L.J. 603 (1974). For article, "State and Federal Legislative Response to the Asbestos Threat", see 17 Colo. Law. 1973 (1988).

Inspection held not unreasonable search. Where, under the former Colorado air pollution control act, a Colorado department of health inspector entered respondent's plant yard to make a test of the plumes of smoke being emitted from respondent's plant chimneys, without a warrant or respondent's knowledge, such inspection did not amount to an unreasonable search, since the inspector had sighted what anyone in the city who was near the plant could see, plumes of smoke. Air Pollution Variance Bd. v. W. Alfalfa Corp., 416 U.S. 861, 94 S. Ct. 2114, 40 L. Ed. 2d 607 (1974).

25-7-112. Air pollution emergencies endangering public health anywhere in this state.

(1) Whenever the division determines, after an investigation initiated either independently by the division or upon the request of an affected member of the public living or working in the vicinity of a suspected discharge, that any person is either engaging in any activity involving a significant risk of air pollution or is discharging or causing to be discharged into the atmosphere, directly or indirectly, any air pollutants and such activity or discharge constitutes a clear, present, and immediate danger to the environment or to the health of the public, or that any such activity or discharge of air pollutants, if permitted to continue unabated, will result in a condition of clear, present, and immediate danger to the health of the public, the division shall:

(a) Issue a written cease-and-desist order to said person requiring immediate discontinuance of such activity or the discharge of such pollutant into the atmosphere, and, upon receipt of such order, such person shall immediately discontinue such activity or discharge; or

(b) Apply to any district court of this state for the district in which the said activity or discharge is occurring for a temporary restraining order, temporary injunction, or permanent injunction as provided for in the Colorado rules of civil procedure. Any such action in a district court shall be given precedence over all other matters pending in such district court. The institution of such injunction proceedings by the division shall confer upon said district court exclusive jurisdiction to determine finally the subject matter of the proceeding; or

(c) Both issue such a cease-and-desist order and apply for any such restraining order or injunction.

(1.5) (a) If, upon the request of a member of the public as described in subsection (1) of this section, the division chooses to investigate a suspected discharge, the division shall report the result of its investigation to the person who made the request and shall make such result public no later than sixty days after the completion of the investigation. If the person who made the request is dissatisfied with the result of the investigation, or if no investigation was made, such person may complain to the commission by petition.

(b) Upon receipt of a petition filed under paragraph (a) of this subsection (1.5), the commission shall promptly give notice of receipt of the petition to the owner or operator of the source of the alleged discharge, and, after considering the petition, the response, if any, of such owner or operator, and the response of the division, the commission shall respond to the petition within forty-five days after receipt by:

(I) Ordering the division to proceed with a new or further investigation under this section or section [25-7-113](#); or

(II) Denying the petition and stating the reasons for denial, which may include, but are not limited to, the lack of a substantial factual basis, the allegation of facts substantially similar to those at issue in a previous or currently pending investigation, or a finding that the petition was interposed for purposes of harassment or delay; or

(III) Providing an opportunity to submit additional factual information in support of, or in response to, the petition. The commission may require any new information to be submitted in writing, or it may convene an informal hearing as soon as is practicable.

(c) A hearing held pursuant to subparagraph (III) of paragraph (b) of this subsection (1.5) shall be subject to the following procedural requirements:

(I) The hearing shall be conducted as an informal hearing, and, in particular, no sworn testimony shall be taken except as the commission deems necessary to clarify the factual basis of the petition;

(II) Parties may represent themselves or be represented by agents who need not be attorneys;

(III) Notice of such hearing shall be given at least twenty days prior to the hearing;

(IV) The purpose of the hearing shall be to enable the commission to decide whether to order an investigation as provided in subparagraph (I) of paragraph (b) of this subsection (1.5); and

(V) To preserve the commission's role as an appellate body, the hearing shall not be used as a forum for determining the merits of the petition.

(2) (a) Whenever the division determines, after investigation, that the condition of the ambient air in any portion of this state constitutes a clear, present, and immediate danger to the environment or to the health of the public, or that any activity or discharge of air pollutants, if permitted to continue unabated, will result in a condition of clear, present, and immediate danger to the health of the public, and that the procedures available to the division under subsection (1) of this section will not adequately protect the public, it shall immediately notify the governor of its determination of either of such conditions, and it shall request the governor to declare a state of air pollution emergency in such portion of this state.

(b) Upon such notification and request by the division, the governor is empowered to declare a state of air pollution emergency in such portion of the state and to take any and all actions necessary to protect the health of the public in such portion of the state, including, but not limited to:

(I) Ordering a halt or curtailment of the movement of all motor vehicles except emergency vehicles; and

(II) Ordering a halt or curtailment of all operations, activities, processes, or conditions which he reasonably believes to be contributing to such emergency.

(c) From time to time, whenever appropriate, the governor, in cooperation with his department heads, shall develop or modify such plans as will be necessary or appropriate to control and abate the air pollution conditions most likely to require the exercise of the powers granted in paragraph (b) of this subsection (2).

Source: L. 79: Entire article R&RE, p. 1029, 1, effective June 20. L. 92: IP(1) and (2)(a) amended, p. 1198, 16, effective July 1. L. 94: IP(1) amended and (1.5) added, p. 1420, 3, effective May 25.

Cross references: For injunctions, see C.R.C.P. 65.

ANNOTATION

Law reviews. For comment, "Environmental Law -- Requirement of Notice in Visual Opacity Readings -- Air Pollution Variance Bd. v. Western Alfalfa Corp., 94 S. Ct. 2114 (1974)", see 51 Den. L.J. 603 (1974). For article, "Liabilities of Nonoperating Mineral Interest Owners", see 51 U. Colo. L. Rev. 153 (1980).

25-7-113. Air pollution emergencies endangering public welfare anywhere in this state.

(1) Whenever the division determines, after investigation, that any person is either engaging in any activity involving a significant risk of air pollution or is discharging or causing to be discharged into the atmosphere, directly or indirectly, any air pollutants and such activity or discharge does not constitute a clear, present, and immediate danger to the health of the public, but is of such a nature as to cause extreme discomfort or that it is an immediate danger to the welfare of the public because such pollutants make habitation of residences or the conduct of businesses subjected to the pollutants extremely unhealthy or disruptive, the division shall:

(a) Issue a written cease-and-desist order to said person requiring immediate discontinuance of such activity or the discharge of such pollutant into the atmosphere, and, upon receipt of such order, such person shall immediately discontinue such activity or discharge; or

(b) Apply to any district court of this state for the district in which the said activity or discharge is occurring for a temporary restraining order, temporary injunction, or permanent injunction as provided for in the Colorado rules of civil procedure. Any such action in a district court shall be given precedence over all other matters pending in such district court. The institution of such injunction proceedings by the division shall confer upon said district court exclusive jurisdiction to determine finally the subject matter of the proceeding; or

(c) Both issue such a cease-and-desist order and apply for any such restraining order or injunction.

Source: L. 79: Entire article R&RE, p. 1030, 1, effective June 20.

ANNOTATION

Law reviews. For article, "Liabilities of Nonoperating Mineral Interest Owners", see 51 U. Colo. L. Rev. 153 (1980).

Applied in *CF&I Steel Corp. v. Colo. Air Pollution Control Comm'n*, 199 Colo. 270, 610 P.2d 85 (1980).

25-7-114. Permit program - definitions.

As used in section 25-7-114 to 25-7-114.7, unless the context otherwise requires:

(1) "Affected source" means a source that includes one or more fossil-fuel fired combustion devices subject to emission reduction requirements or limitations under subchapter IV of the federal act or this article.

(2) "Construction permit" means the same as an "emission permit" as required under this section as it existed prior to July 1, 1992, and is the permit required under section 25-7-114.2 after July 1, 1992.

(3) "Major source" means any stationary source (or group of stationary sources which have the same two-digit standard industrial code, are located on one or more contiguous or adjacent properties, and are under common control) that:

(a) Subject to the provisions of section 112 (n) (4) of the federal act, emits or has the potential to emit considering enforceable controls, in the aggregate, ten tons per year or more of any hazardous air pollutant or twenty-five tons per year or more of any combination of hazardous air pollutants, or such lesser quantity of hazardous air pollutants as may be established pursuant to the federal act; or

(b) Directly emits, or has the potential to emit, one hundred tons per year or more of any air pollutant; or

(c) Meets any of the definitions of major source set forth in Part D of subchapter I of the federal act.

(4) "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitations on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is enforceable and federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

(5) "Schedule of compliance" means a schedule of required measures, including an enforceable sequence of actions or operations, leading to compliance with an applicable implementation plan, emission standard, emission limitation, emission prohibition, or emission control regulation.

(6) "Synthetic minor source" means, for purposes of this article, any source which would otherwise meet the definition of major source for any pollutants but for the existence of enforceable emission limitations contained in the permit or regulation applicable to that source.

Source: **L. 79:** Entire article R&RE, p. 1030, 1, effective June 20. **L. 82:** (5)(b) amended, p. 423, 1, effective April 23. **L. 84:** (5)(b) amended, p. 783, 4, effective April 12; IP(4), (4)(f)(I)(A), (4)(f)(I)(B), (4)(f)(II), IP(4)(g)(I), (4)(g)(III), (4)(h), and (4)(i) amended, p. 770, 6, effective July 1. **L. 87:** (5)(b) amended, p. 1140, 1, effective June 10; (5) amended, p. 1138, 1, effective July 1; (5)(b) amended, p. 1152, 5, effective July 1. **L. 89:** (4)(m) and (5)(c) to (5)(f) added and (5)(a) amended, p. 1165, 1, 2, effective May 26. **L. 91:** (5)(d)(III) amended and (5)(f) repealed, p. 940, 1, 2, effective May 16. **L. 92:** Entire section R&RE, p. 1198, 17, effective July 1. **L. 94:** (6) amended, p. 1421, 4, effective May 25.

Editor's note: Amendments to subsection (5)(b) by Senate Bill 87-145, House Bill 87-1239, and House Bill 87-1372 were harmonized.

25-7-114.1. Air pollutant emission notices.

(1) No person shall permit emission of air pollutants from, or construction or alteration of, any facility, process, or activity except residential structures from which air pollutants are, or are to be, emitted unless and until an air pollutant emission notice has been filed with the division with respect to such emission. An air pollutant emission notice shall be valid for a period of five years.

(2) All sources existing on or before December 31, 1992, shall file an updated air pollutant emission notice with the division on or before December 31, 1992. In addition, a revised emission notice shall be filed whenever a significant change in emissions, in processes, or in the facility is anticipated or has occurred. The revised air pollutant emission notice shall be valid for five years or until the underlying permit expires. The commission shall exempt those sources or categories of sources which it determines to be of minor significance from the requirement that an air pollutant emission notice be filed.

(3) The commission shall promulgate a list of air pollutants which are required to be reported in an air pollutant emission notice. Prior to the commission's promulgation of such a list of air pollutants to be reported in an air pollutant emission notice, sources shall report any emissions of the following which are in excess of de minimis quantities:

(a) Volatile organic compounds or precursors of air quality problems in Colorado as determined by the commission by regulation;

(b) Any pollutant regulated under section [25-7-109.3](#) or under section 112(b) of the federal act;

(c) Any pollutant for which a national primary ambient air quality standard has been promulgated under section 109 of the federal act;

(d) All extremely hazardous substances listed pursuant to section 302(a)(2) of the federal "Superfund Amendments and Reauthorization Act of 1986", 42 U.S.C. sec. 11002 (a)(2).

(4) Each such notice shall specify the location at which the proposed emission will occur, the name and address of the person operating or owning such facility, process, or activity, the nature of such facility, process, or activity, and an estimate of the quantity and composition of the expected emission. The division shall make available at all air pollution control authority offices appropriate forms on which the information required by this section shall be furnished.

(5) (Deleted by amendment, L. 2001, p. 640, 2, effective May 30, 2001.)

(6) (a) The fee for filing an air pollutant emission notice or amendment thereto under this section shall be one hundred fifty-two dollars and ninety cents. The moneys collected pursuant to this section shall be transmitted to the state treasurer, who shall credit the same to the stationary sources control fund created in section [25-7-114.7](#) (2) (b) (I).

(b) Notwithstanding the amount specified for the fee in paragraph (a) of this subsection (6), the commission by rule or as otherwise provided by law may reduce the amount of the fee if necessary pursuant to section [24-75-402](#) (3), C.R.S., to reduce the uncommitted reserves of the fund to which all or any portion of the fee is credited. After the uncommitted reserves of the fund are sufficiently reduced, the commission by rule or as otherwise provided by law may increase the amount of the fee as provided in section [24-75-402](#) (4), C.R.S.

Source: **L. 92:** Entire section added, p. 1200, 18, effective July 1. **L. 93:** (6) amended, p. 941, 1, effective May 28; (3)(d) and (5)(b)(I) amended, p. 1787, 68, effective June 6. **L. 98:** (6) amended, p. 1334, 48, effective June 1. **L. 2001:** (2), (5), and (6)(a) amended, p. 640, 2, effective May 30. **L. 2008:** (6)(a) amended, p. 882, 2, effective May 20.

ANNOTATION

Law reviews. For article, "Colorado's New Clean Air Program", see 22 Colo. Law. 541 (1993).

25-7-114.2. Construction permits.

No person shall construct or substantially alter any building, facility, structure, or installation, except single-family residential structures, or install any machine, equipment, or other device, or commence the conduct of any such activity, or commence performance of any combinations thereof, or commence operations of any of the same which will or do constitute a new stationary source or a new indirect air pollution source without first obtaining or having a valid construction permit therefor from the division or commission, as the case may be; except that no construction permit shall be required for new indirect air pollution sources until regulations regarding construction permits for such sources have been promulgated by the commission, but in no event shall regulations governing indirect air pollution sources be more stringent than those required for compliance with the federal act and final rules and regulations adopted pursuant thereto. Any emission permit validly issued prior to July 1, 1992, pursuant to section [25-7-114](#), as said section existed prior to July 1, 1992, and in effect on or after July 1, 1992, shall be deemed to be a valid construction permit issued pursuant to this section. The commission shall designate by regulation those classes of minor or insignificant sources of air pollution which are exempt from the requirement for a permit because of their negligible impact on air quality.

Source: **L. 92:** Entire section added, p. 1202, 18, effective July 1.

ANNOTATION

Law reviews. For article, "Colorado's New Clean Air Program", see 22 Colo. Law. 541 (1993).

25-7-114.3. Operating permits required for emission of pollutants.

(1) No person shall operate any of the following sources without first obtaining a renewable operating permit from the division for such source in a manner consistent with the requirements of this article and the federal act:

(a) Any affected source;

(b) Any major source;

(c) Any source required to comply with standards of performance for new stationary sources under section 111 of the federal act, unless otherwise exempted from permitting requirements pursuant to federal rules adopted in accordance with section 502 of the federal act;

(d) Any source subject to emission standards or regulations for hazardous air pollutants under section 112 of the federal act, unless otherwise exempted from federal permitting requirements pursuant to federal rules adopted in accordance with section 502 of the federal act;

(e) Any source required to have a permit pursuant to part 2 (prevention of significant deterioration program) or part 3 (attainment program) of this article, or Part C (prevention of significant deterioration of air quality) or Part D (plan requirements for nonattainment area) of subchapter I of the federal act;

(f) Any other source designated under federal law as requiring an operating permit.

(2) For those sources located in the state and participating in the federal early reductions program as specified in section 112 (i) (5) of the federal act, or the United States environmental protection agency's 33/50 program, or the state early reductions program as set forth in subsection (3) of this section, or any of such programs, the commission and division shall establish a system to credit emission permit fees to be established pursuant to section [25-7-114.6](#) and [25-7-114.7](#) and to be assessed against such sources at a ratio of at least two-for-one for every ton of emissions reduced pursuant to the federal early reductions program, the United States environmental protection agency's 33/50 program, or the state early reductions program. A participating source shall be offered a one-time permit fee credit of two tons for each corresponding ton of its reduced emissions that are verified by the division. The permit fee credit shall be available in the year following the year in which the early reduction in emissions is achieved.

(3) The commission shall adopt the federal early reductions program specified in section 112 (i) (5) of the federal act and promulgate a state early reductions program which shall include the following elements:

(a) The state early reductions program shall be consistent with the federal early reductions program; and

(b) A six-year extension of compliance for existing sources with emission standards promulgated pursuant to section 112 (d) of the federal act if the source has achieved an emission reduction of ninety percent or more of hazardous air pollutants (ninety-five percent or more for hazardous air pollutants which are particulates); and

(c) If a source is granted a compliance extension, an alternative limitation to be established by permit to ensure continued achievement of the emission reduction; and

(d) Sources subject to and in compliance with an enforceable commitment under the federal and state early reductions programs shall be considered in compliance with all state regulations and requirements for hazardous air pollutants for the period of such commitment.

(4) For affected sources under Title V of the federal act:

(a) Operating permits and requirements for permit applications, compliance plans, and monitoring and reporting requirements shall be consistent with the provisions of Title IV as well as Title V of the federal act;

(b) In order to ensure reliability of electric power, nothing in the requirements pertaining to renewable operating permits required by this article shall be construed as requiring termination of operations of an electric utility steam generating unit for failure to have an approved permit or compliance plan;

(c) Nothing in this article shall be construed as affecting SO₂ allowances given to sources affected under Title IV of the federal act.

Source: L. 92: Entire section added, p. 1203, 18, effective July 1. **L. 2010:** (1)(c) and (1)(d) amended, (HB 10-1042), ch. 209, p. 909, 2, effective September 1.

25-7-114.4. Permit applications - contents - rules.

(1) The commission shall promulgate such regulations as may be necessary and proper for the orderly and effective administration of construction permits and renewable operating permits. Such regulations shall be in conformity with the provisions of this article and with federal requirements, shall be in furtherance of the policy contained in section [25-7-102](#), and shall implement, where applicable, permit and permit application contents, procedures, requirements, and restrictions with respect to the following:

(a) Identification and address of the owner and operator of the source or facility from which the emission or emissions are to be permitted;

(b) Location, quantity, and quality characteristics of the permitted emissions;

(c) Inspection, monitoring, record-keeping, and reporting requirements consistent with standard procedures, methods, and requirements established by the division;

(d) Deadlines for submitting permit applications and compliance plans, which, for applications for renewable operating permits, shall be no later than twelve months after the source becomes subject to an approved permit program. Deadlines for submitting permit applications for renewal of renewable operating permits shall be consistent with the requirements for filing such applications promulgated under the federal act but in no event earlier than required under the federal act.

(e) Contents of compliance plans to be submitted with renewable operating permit applications, which shall include schedules of compliance and progress reports at least every six months;

(f) Annual certifications of facility compliance with permit requirements, with prompt reporting of deviations from permit requirements;

(g) Submission of pertinent plans and specifications for the facility or source from which the emission is to be permitted;

(h) Restrictions on transfers of the permit;

(i) Procedures to be followed in the event of expansion or modification of the source or facility from which the emission occurs, or change in the quality, quantity, or frequency of the emission;

(j) Duration of the permit and renewal procedures. The duration of construction permits shall be until the renewable operating permit is issued. The duration of renewable operating permits is five years.

(k) Procedures to terminate, modify, or revoke and reissue permits for cause; procedures to revise permits, prior to renewal or termination, to incorporate applicable standards and regulations adopted after the issuance of such permit as expeditiously as practicable, but not later than eighteen months after promulgation of the applicable requirement, or to incorporate otherwise applicable standards and regulations in the permit; except that no such revision shall be required if the effective date of the standards or regulation occurs after the permit term expires, such revision shall be treated as a permit renewal, and the defense established under subsection (3) of this section shall apply until the permit amendment is complete;

(l) Procedures for incorporating emission limitations and other requirements from an applicable implementation plan, and other applicable requirements, into new or renewed permits;

(m) Procedures for notifying other contiguous states whose air quality may be affected by the emissions or that are within fifty miles of the source and for submitting comments and recommendations regarding the proposed permit;

(n) Procedures for modifying or amending permits, and procedures for authorizing any change within a permitted facility without requiring a permit revision, so long as any such change is not a modification under any provision of subchapter I of the federal act, and any such change does not exceed the emissions allowable under the permit, and advance notice is given to the division and the administrator. Such advance notice shall be no earlier than that required under regulations promulgated pursuant to the federal act. Failure of the division to respond by the day following the last day of such advance notice period allows the source to proceed with any such change.

(o) Procedures to make available to the public any permit application, compliance plan, permit, and monitoring or compliance report, subject to the provisions of section [25-7-119](#) (4). If an applicant is required to submit information entitled to protection from disclosure, the applicant may submit such information separately.

(p) Procedures for issuing general permits after notice and an opportunity for hearing, covering numerous similar sources;

(q) Procedures for issuing single permits for a facility with multiple sources; and

(r) Requirements for permit applications, including a standard application form and criteria for determining in a timely fashion the completeness of applications.

(2) The division shall examine applications for and may issue, suspend, revoke, modify, deny, and otherwise administer all permits required under this article. Such administration shall be in accordance with the provisions of this article and regulations promulgated by the commission.

(3) (a) Compliance with all renewable operating permit terms and conditions shall be deemed compliance with section [25-7-114.3](#) and shall be deemed compliance with other applicable provisions of this article if:

(I) The permit includes the applicable requirements of such provisions; or

(II) The division or commission, in acting on the permit application, makes a determination that such other provisions are not applicable, and the permit includes the determination or a concise summary thereof. Such other provisions as are not applicable in each permit shall be identified upon the request of the permittee.

(b) Nothing in paragraph (a) of this subsection (3) shall alter or affect:

(I) The provisions of section [25-7-112](#) or 25-7-113 or section 303 of the federal act;

(II) The liability of an owner or operator of a source for any violation of applicable requirements prior to or at the time of permit issuance.

(4) For any permitted sand and gravel operation or crushed stone quarry or oil and gas well operation, if a breakdown of equipment or changes in market conditions require any additional crusher or screen or skid-mounted compressor or glycol dehydrator to be brought onto a site, the air pollutant emission notice filed under section [25-7-114.1](#) shall also serve as an application for a permit under the provisions of this section to continue operations at such a site with alternative or additional equipment until such permit is issued stating emission limitations.

Source: L. 92: Entire section added, p. 1205, 18, effective July 1. **L. 95:** (4) added, p. 1342, 3, effective July 1.

25-7-114.5. Application review - public participation.

(1) Prior to submitting an application for a permit, the applicant may request and, if so requested, the division shall grant a planning meeting with the applicant. At such meeting, the division shall advise the applicant of the applicable permit requirements, including the information, plans, specifications, and data required to be furnished with the permit application.

(2) The division shall evaluate permit applications to determine, for construction permits, whether operation of the proposed new source at the date of start-up and for operating permits, whether the permitted emissions, will comply with all applicable emission control regulations, regulations for the control of hazardous pollutants, and requirements of part 2 or 3 of this article.

(3) The division shall also determine whether applications are for a new source activity that may have an impact upon areas which, as of the projected new source start-up date, are in compliance with national ambient air quality standards as of the date of the permit application, or for new source activity that may have an impact upon areas which, as of the projected new source start-up date, are not in compliance with national ambient air quality standards as of the date of the permit application.

(4) The division shall prepare its preliminary analysis regarding compliance, as set forth in subsection (2) of this section, and regarding the impact on attainment or nonattainment areas, as set forth in subsection (3) of this section, as expeditiously as possible. For construction permits not subject to part 2 of this article, such preliminary analysis shall be completed no later than sixty calendar days after receipt of a completed permit application. Applicants must be advised within sixty calendar days after receipt of any application, or supplement thereto, if and in what respects the subject application is incomplete. Upon failure of the division to so notify the applicant within sixty calendar days of its filing, the application shall be deemed complete. Applications for construction permits subject to part 2 of this article shall be approved or disapproved within twelve months of receipt of a complete application. Applications for

renewable operating permits shall be approved or disapproved within eighteen months after the receipt of the completed permit application; except that those applications submitted within the first year after the effective date of the operating permit program shall be subject to a phased schedule for acting on such permit applications established by the division. The phased schedule shall assure that at least one-third of such permits will be acted on by the division annually over a three-year period. The commission may establish a phased schedule for acting on applications for which a deferral has been granted pursuant to the federal act. A timely and complete permit application operates as a defense to enforcement action for operating without a permit for the period of time during which the division or the commission is reviewing the application and until such time as the division or the commission makes a final determination on the permit application; except that this defense to an enforcement action shall not be available to an applicant which files a fraudulent application.

(5) For those types of projects or activities for which a construction permit application has been filed, defined, or designated by the commission as warranting public comment with respect thereto, the division shall, within fifteen calendar days after it has prepared its preliminary analysis, give public notice of the proposed project or activity by at least one publication in a newspaper of general distribution in the area in which the proposed project or activity, or a part thereof, is to be located or by such other method that is reasonably designed to ensure effective general public notice. The division shall also during such period of time maintain in the office of the county clerk and recorder of the county in which the proposed project or activity, or a part thereof, is located a copy of its preliminary analysis and a copy of the application with all accompanying data for public inspection. The division shall receive and consider public comment thereon for a period of thirty calendar days thereafter.

(6) (a) For any construction permit application subject to the requirements of a new or modified major source in a nonattainment area, or for prevention of significant deterioration as provided in part 2 of this article, or for any application for a renewable operating permit, within fifteen calendar days after the issuance of its preliminary analysis, the division shall:

(I) Forward to the applicant written notice of the applicant's right to a formal hearing before the commission with respect to the application; and

(II) Give public notice of the proposed source or modification and the division's preliminary analysis thereof by at least one publication in a newspaper of general distribution in the area of the proposed source or modification, or by such other method that is reasonably designed to ensure effective general public notice. Such notice shall advise of the opportunity for a public hearing for interested persons to appear and submit written or oral comments to the commission on the air quality impacts of the source or modification, the alternatives to the source or modification, the control technology required, if applicable, and other appropriate considerations. Any such notice shall be printed prominently in at least ten-point bold-faced type. The division shall receive and consider any comments submitted.

(b) If within thirty calendar days of publication of such public notice the applicant or an interested person submits a written request for a public hearing to the division, the division shall transmit such request to the commission along with the application, the division's preliminary analysis, and any written comments received by the division, within five calendar days of the end of such thirty-day period. The commission shall, within sixty calendar days after receipt of the application, comments, and analysis, unless such greater time is agreed to by the applicant and

the division, hold a public hearing to elicit and record the comment of any interested person regarding the sufficiency of the preliminary analysis and whether the permit application should be approved or denied. At least thirty calendar days prior to such public hearing, notice thereof shall be mailed by the commission to the applicant, printed in a newspaper of general distribution in the area of the proposed source or modification, and submitted for public review with the county clerk and recorder of the county wherein the project or activity is proposed.

(7) (a) Within thirty calendar days following the completion of the division's preliminary analysis for applications for construction permits not subject to part 2 of this article, or within thirty calendar days following the period for public comment provided for in subsection (5) of this section, or for applications for construction permits subject to part 2 of this article and for renewable operating permits, if a hearing is held, within the appropriate time period established pursuant to this article, the division or the commission, as the case may be, shall grant or deny the permit application. Any permit required pursuant to this article shall be granted by the division or the commission, as the case may be, if it finds that:

(I) The source or activity will meet all applicable emission control regulations and regulations for the control of hazardous air pollutants;

(II) The source or activity will meet the requirements of part 2 or 3 of this article, if applicable;

(III) For construction permits, the source or activity will meet any applicable ambient air quality standards and all applicable regulations;

(III.5) For renewable operating permits, the source or activity will meet all applicable regulations; and

(IV) For renewable operating permits, the United States environmental protection agency has not made a timely objection to issuance of such permit pursuant to the federal act.

(b) Failure of the division or commission, as the case may be, to grant or deny the permit application or permit renewal application within the time prescribed shall be treated as a final permit action for purposes of obtaining judicial review in the district court in which the source is located, to require that action be taken on such application by the commission or division, as appropriate, without additional delay.

(c) If an applicant has submitted a timely and complete application for a renewable operating permit required by this article, including renewals, but final action has not been taken on such application, and, if required to have a construction permit, such construction permit is in place and valid, the source's failure to have a renewable operating permit shall not be a violation of this article, unless the delay in final action was due to the failure of the applicant to timely submit information required or requested by the division to process the application.

(8) If the division denies a permit or imposes conditions upon the issuance of a permit which are contested by the applicant or if the division revokes a permit pursuant to subsection (12) of this section, the applicant may request a hearing before the commission. The hearing shall be held in accordance with section [25-7-119](#) and [24-4-105](#), C.R.S. The commission may, after review of the evidence presented at the hearing, affirm, reverse, or modify the decision of the division but shall, in any event, assure that all the requirements of subsections (6) and (7) of this section are met.

(9) Renewable operating permits shall summarize existing operating restrictions pursuant to section [25-7-114.4](#) (3).

(10) A permit amendment will not be required to authorize a change in practice which is otherwise permitted pursuant to this article, the state implementation plan, or the federal act merely because an existing permit does not address the practice. Changes in industrial practices and procedures that are not inconsistent with the terms of a renewable operating permit can be made without seeking any change to the terms of said permit.

(11) An order of the division or commission shall be final upon issuance. Any participant in the public comment process and any other person who could obtain judicial review under applicable law shall have standing for purposes of seeking review of any final order of the commission or division regarding applications, renewals, or revisions of any permits. The public participation requirements of subsections (5) and (6) of this section shall apply to all renewable operating permit applications, revisions, and renewals.

(12) (a) A permitted entity shall notify the division within fifteen days after the commencement of any activity for which a construction permit has been issued. Within one hundred eighty days after commencement of operation for which a construction permit has been issued, the source shall demonstrate to the division compliance with the terms and conditions of the construction permit or the division may, pursuant to rules that are adopted by the commission based upon the results of the study conducted under section [25-7-114.7](#) (2) (a) (V), inspect the project or activity to determine whether or not the terms and conditions of the construction permit have been properly satisfied. At the end of one hundred eighty days after the commencement of operation, the division must:

(I) Revoke the construction permit; or

(II) Continue the construction permit, if applicable; or

(III) Notify the owner or operator that the source has demonstrated compliance with the construction permit.

(b) For those sources subject to the renewable operating permit program, a renewable operating permit will be issued within the appropriate time periods if all requirements for a renewable operating permit are met by the source. The construction permit requirements shall remain in effect until the renewable operating permit is issued.

(12.5) (a) (I) Except for sources involved in agricultural, horticultural, or floricultural production such as farming, seasonal crop drying, animal feeding, or pesticide application, upon determination by the division that the criteria set forth in paragraph (b) of this subsection (12.5) applies to a source that is not required to obtain a renewable operating permit, the division may reopen such construction permit for the purpose of imposing any or all of the following additional terms and conditions:

(A) Enhanced record-keeping requirements;

(B) Enhanced emissions and ambient monitoring requirements;

(C) Operating and maintenance requirements; and

(D) Emission control requirements pursuant to section [25-7-109.3](#).

(II) Any such condition which is contested by the permittee may be reviewed by the commission in accordance with the provisions of subsection (7) of this section.

(b) With the exception of those sources involved in agricultural, horticultural, or floricultural production such as farming, seasonal crop drying, animal feeding, and pesticide application, a source's construction permit may be reopened for cause for the purposes of paragraph (a) of this subsection (12.5) only upon a determination by the division that the location of the source is significant in terms of its proximity to residential or business areas, and one or more of the following criteria apply to the permitted source:

(I) The control equipment utilized by the source requires an unusually high degree of maintenance or operational sensitivity when compared to control equipment in general; or

(II) The design characteristics of the source require an unusually high degree of maintenance or operational sensitivity when compared to the design characteristics of all sources in general; or

(III) The application of the control equipment utilized is unique or untested; or

(IV) The operational variability of the source may impact the effectiveness of the controls; or

(V) The emissions from the source will threaten public health, as determined pursuant to section [25-7-109.3](#).

(c) Nothing in paragraph (a) or (b) of this subsection (12.5), as amended by House Bill 05-1180, as enacted at the first regular session of the sixty-fifth general assembly, shall be construed as changing the property tax classification of property owned by a horticultural or floricultural operation.

(13) The commission shall, wherever practicable, promulgate regulations for renewable operating permit application requirements that combine requirements for construction permits with renewable operating permits to avoid duplicative efforts by the source and the division.

(14) (Deleted by amendment, L. 2010, (HB 10-1042), ch. 209, p. 909, 3, effective September 1, 2010.)

(15) Repealed.

(16) (a) If the division experiences a backlog in processing air quality permit applications caused by an occasional need that is seasonal, irregular, or fluctuating in nature, and the department determines or reasonably expects that, as a result, permits would not be issued within statutory time frames, the division shall make available to sources that are not subject to permitting under part C of the federal act the option to have the air quality modeling that is submitted with the applicant's air permit application reviewed for acceptance as demonstrating compliance by a contract consultant selected by the division in lieu of the review being conducted by division staff.

(b) The division shall select and contract with nongovernmental air quality modeling engineers to perform air quality modeling reviews of applicants who choose contract consultant review of their air quality permit modeling. The division is not subject to the requirements of the "Procurement Code", articles 101 to 112 of title [24](#), C.R.S., in selecting and contracting with the consultants. The division shall review and exclude from consideration as a contract air quality

modeling consultant any contractors with a conflict of interest regarding air quality permit applications. Applicants that choose consultant review of their air quality modeling are responsible for both the consultant's costs associated with the air modeling review as well as the division's costs associated with the review and determination of the air permit application, to be paid to the division. The division shall transfer the money to the state treasurer, who shall credit it to the stationary sources control fund created in section [25-7-114.7](#) (2) (b) (I).

(c) The division shall use the results of the modeling conducted pursuant to paragraph (b) of this subsection (16) for purposes of the division's permit application analysis.

Source: **L. 92:** Entire section added, p. 1207, 18, effective July 1. **L. 93:** (7)(a) amended, p. 1923, 4, effective July 1. **L. 96:** IP(12)(a) amended, p. 845, 2, effective July 1; (15) repealed, p. 1258, 154, effective August 7. **L. 2005:** IP(12.5)(a)(I) and IP(12.5)(b) amended and (12.5)(c) added, p. 349, 5, effective August 8. **L. 2010:** (12)(a) and (14) amended, (HB 10-1042), ch. 209, p. 909, 3, effective September 1. **L. 2011:** (16) added, (SB 11-235), ch. 307, p. 1507, 1, effective June 9.

Cross references: For the legislative declaration contained in the 1996 act repealing subsection (15), see section 1 of chapter 237, Session Laws of Colorado 1996.

25-7-114.6. Emission notice - fees.

(1) The commission shall designate by regulations those classes of minor or insignificant sources of air pollution which are exempt from the requirement for an emission notice or the payment of an emission notice filing fee because of their negligible impact upon air quality.

(2) An air pollution emission notice shall be deemed to run with the land. The moneys collected pursuant to this section and section [25-7-403](#) and [25-7-510](#) shall be remitted to the state treasurer, who shall credit the same to the stationary sources control fund created in section [25-7-114.7](#) and subject to the provisions of said section.

(3) The general assembly shall direct the commission to adjust any fees imposed by this section so that the revenues approximate the annual appropriations to the division to carry out its duties under this subsection (3) with respect to stationary sources.

Source: **L. 92:** Entire section added, p. 1214, 18, effective July 1. **L. 93:** (1) amended, p. 941, 2, effective May 28. **L. 94:** (2) amended, p. 1640, 60, effective May 31.

25-7-114.7. Emission fees - fund.

(1) As used in this section, unless the context otherwise requires:

(a) Indirect and direct costs include, but are not limited to:

(I) Reviewing and acting upon any application for such a permit;

(II) Implementing and enforcing the terms and conditions of any such permit (not including court costs or other legal costs associated with any enforcement action);

(III) Emissions and ambient monitoring;

(IV) Preparing generally applicable regulations or guidance;

(V) Modeling, analyses, and demonstrations;

(VI) Preparing inventories and tracking emissions; and

(VII) Establishing and administering a small business stationary source technical and environmental compliance program, pursuant to section [25-7-109.2](#).

(b) (I) "Regulated pollutant" means:

(A) A volatile organic compound;

(B) Each pollutant regulated under section [25-7-109](#) or section 111 of the federal act;

(C) Each pollutant regulated under section 112 (b) of the federal act;

(D) Each pollutant for which a national primary ambient air quality standard has been promulgated, except for carbon monoxide;

(II) The term "regulated pollutant", for the purpose of assessing fees, shall not include fugitive dust or any fraction thereof.

(2) (a) (I) The commission shall designate by rule those classes of sources of air pollution that are exempt from the requirement to pay an annual emission fee. Every owner or operator of an air pollution source not otherwise exempt in accordance with such commission rules shall pay an annual fee as follows:

(A) For fiscal years 2008-09 and thereafter, twenty-two dollars and ninety cents per ton of regulated pollutant reported in the most recent air pollution emission notice on file with the division;

(A.5) A late payment fee. Such fee shall be assessed at the rate of one percent per month for accounts more than sixty days past due; except that no late payment fee may be assessed during a period in which an account is under administrative review by the division in order to respond to a reasonable request by the owner or operator of a source for allocation of the fees among multiple sources or to resolve a good-faith claim by the owner or operator of a source that there has been an error in calculation of the amount of fees due. At the end of the administrative review, the division shall inform the owner or operator of the source in writing of any findings.

(B) For fiscal years 2008-09 and thereafter, in addition to the annual fee set forth in subparagraph (A) of this subparagraph (I), for hazardous air pollutants, including ozone-depleting compounds, an annual fee of one hundred fifty-two dollars and ninety cents per ton;

(C) Every local air pollution control authority that adopts any air pollution resolution or ordinance that is more stringent than corresponding state provisions shall pay for the state's enforcement costs;

(II) In no event shall an owner or operator of a major source pay more than a fee based upon total annual emissions of four thousand tons of each regulated pollutant per source.

(III) Every owner or operator subject to the requirements of paying fees set forth in subparagraph (I) of this paragraph (a) shall also pay a processing fee for the costs of processing any application other than an air pollution emission notice under this article. Every significant user of prescribed fire, including federal facilities, submitting a planning document to the commission pursuant to section [25-7-106](#) (8) (b) shall pay a fee for costs of evaluating such documents. The division shall assess a fee for work it performs, up to a maximum of thirty hours

at a rate of seventy-six dollars and forty-five cents per hour. If the division requires more than thirty hours to process the application or evaluate the prescribed fire-related planning documents, the fee paid by the applicant shall not exceed three thousand dollars unless the division has informed the source that the respective billings may exceed three thousand dollars and has provided the source with an estimate of what the actual charges may be prior to commencing the work.

(IV) and (V) Repealed.

(VI) Notwithstanding subparagraph (III) of this paragraph (a), the division shall not assess a fee for work performed to negotiate a voluntary agreement under part 12 of this article above a maximum of one hundred hours at a rate of fifty-nine dollars and ninety-eight cents per hour unless the owner or operator proposing the voluntary agreement consents to a greater fee in writing.

(b) (I) The moneys collected pursuant to this section shall be remitted to the state treasurer, who shall credit the same to the stationary sources control fund, which fund is hereby created. From such fund, the general assembly shall appropriate to the department of public health and environment, at least annually, such moneys as may be necessary to cover the division's direct and indirect costs required to develop and administer the programs established pursuant to parts 1 to 4 and 10 of this article for the control of air pollution from stationary sources. Any permit fee moneys not appropriated by the general assembly and any appropriated funds not spent by the division shall remain in the stationary sources control fund and shall not revert to the general fund of the state at the end of any fiscal year. Any such moneys shall be separately accounted for. All interest earned on moneys in the stationary sources control fund shall remain in the fund and shall not revert to the general fund or to any other fund.

(II) Of the portion of fee revenue attributable to the increases enacted during the first regular session of the sixty-third general assembly, the department shall allocate one hundred fifty thousand dollars per year for the purpose of modernizing and maintaining the computer system used for the administration of the stationary source program so as to make the overall system more efficient, and seventy thousand dollars for the purpose of enhancing county and district public health agency participation in air quality control activities. The department may reallocate moneys between these two purposes as reasonably necessary so long as the total amount devoted to such purposes remains at two hundred twenty thousand dollars annually.

(c) The general assembly by bill may annually adjust the fees established in this section and in section [25-7-114.1](#) as necessary to cover the reasonable costs, both direct and indirect, of the stationary source program and to assure that adequate personnel and funding will be available to administer the permit program.

(d) No permit will be issued if the administrator objects to its issuance in a timely manner under this title.

(e) Repealed.

(f) Notwithstanding the amount specified for any fee in this subsection (2), the commission by rule or as otherwise provided by law may reduce the amount of one or more of the fees if necessary pursuant to section [24-75-402](#) (3), C.R.S., to reduce the uncommitted reserves of the fund to which all or any portion of one or more of the fees is credited. After the uncommitted

reserves of the fund are sufficiently reduced, the commission by rule or as otherwise provided by law may increase the amount of one or more of the fees as provided in section [24-75-402](#) (4), C.R.S.

Source: **L. 92:** Entire section added, p. 1214, 18, effective July 1. **L. 93:** IP(2)(a)(I), (2)(a)(I)(A), and (2)(b) amended, p. 941, 3, effective May 28. **L. 94:** (2)(a)(I)(A), (2)(b), and (2)(c) amended and (2)(a)(I)(A.5) and (2)(a)(IV) added, pp. 1390, 1392, 2, 3, effective May 25; (2)(b) amended, p. 2783, 501, effective July 1. **L. 96:** (1)(b)(II) amended, p. 1309, 1, effective June 1; (2)(b) amended, p. 1451, 2, effective June 1; (2)(a)(I)(A) and (2)(a)(IV) amended and (2)(a)(V) added, p. 846, 3, effective July 1; (2)(e) repealed, p. 1259, 155, effective August 7. **L. 97:** (1)(a)(VII) amended, p. 527, 9, effective July 1. **L. 98:** (2)(f) added, p. 1335, 49, effective June 1; (2)(a)(VI) added, p. 1050, 2, effective July 1. **L. 99:** (2)(a)(III) amended, p. 790, 2, effective May 24. **L. 2001:** (2)(a)(I)(A), (2)(a)(I)(B), (2)(a)(III), (2)(a)(VI), (2)(b), and (2)(c) amended, p. 642, 3, effective May 30; (2)(a)(III) amended, p. 1185, 2, effective July 1. **L. 2008:** IP(2)(a)(I), (2)(a)(I)(A), (2)(a)(I)(B), and (2)(a)(III) amended, p. 883, 3, effective May 20. **L. 2010:** (2)(b)(II) amended, (HB 10-1422), ch. 419, p. 2103, 117, effective August 11.

Editor's note: (1) Amendments to subsection (2)(b) by Senate Bill 94-217 and House Bill 94-1029 were harmonized.

(2) Subsection (2)(a)(IV)(C) and (2)(a)(V)(B) provided for the repeal of subsection (2)(a)(IV) and (2)(a)(V), respectively, effective July 1, 1997. (See L. 96, p. 846.)

(3) Amendments to subsection (2)(a)(III) by Senate Bill 01-214 and House Bill 01-1326 were harmonized.

Cross references: For the legislative declaration contained in the 1994 act amending subsection (2)(b), see section 1 of chapter 345, Session Laws of Colorado 1994. For the legislative declaration contained in the 1996 act repealing subsection (2)(e), see section 1 of chapter 237, Session Laws of Colorado 1996.

25-7-114.8. Permit fee credits. (Repealed)

Source: **L. 92:** Entire section added, p. 1217, 18, effective July 1. **L. 2003:** Entire section repealed, p. 843, 2, effective April 7.

25-7-115. Enforcement.

(1) (a) The division shall enforce compliance with the emission control regulations of the commission, the requirements of the state implementation plan, and the provisions of parts 1 to 4 and part 11 of this article, including terms and conditions of any permit required pursuant to this article.

(b) The division shall enforce the provisions of part 5 of this article pursuant to section [25-7-112](#), [25-7-113](#), and [25-7-511](#).

(2) If a written and verified complaint is filed with the division alleging that, or if the division itself has cause to believe that, any person is violating or failing to comply with any regulation of the commission issued pursuant to parts 1 to 4 of this article, order issued pursuant to section [25-7-118](#), requirement of the state implementation plan, provision of parts 1 to 4 of this article, including any term or condition of a permit required pursuant to this article, the division shall cause a prompt investigation to be made; and, if the division investigation determines that any such violation or failure to comply exists, the division shall act expeditiously and within the

period prescribed by law in formally notifying the owner or operator of such air pollution source after the discovery of the alleged violation or noncompliance. Such notice shall specify the provision alleged to have been violated or not complied with and the facts alleged to constitute the violation or noncompliance.

(3) (a) Within thirty calendar days after notice has been given, the division shall confer with the owner or operator of the source to determine whether a violation or noncompliance did or did not occur and, if such violation or noncompliance occurred, whether a noncompliance penalty must be assessed under subsection (5) of this section. The division shall provide an opportunity to the owner or operator at such conference, and may provide further opportunity thereafter, to submit data, views, and arguments concerning the alleged violation or noncompliance or the assessment of any noncompliance penalty.

(b) If, after any such conference, a violation or noncompliance is determined to have occurred, the division shall issue an order requiring the owner or operator or any other responsible person to comply, unless the owner or operator demonstrates that such violation occurred during a period of start-up, shutdown, or malfunction, and timely notice was given to the division of such condition. Such order may include termination, modification, or revocation and reissuance of the subject permit and the assessment of civil penalties in accordance with section 25-7-122. Such order may also require the calculation of a noncompliance penalty under subsection (5) of this section. Unless enforcement of its order has been stayed as provided in paragraph (b) of subsection (4) of this section, the division may seek enforcement, pursuant to section 25-7-121 or 25-7-122, of the applicable regulation of the commission, order issued pursuant to section 25-7-121 or 25-7-122 of the applicable regulation of the commission, order issued pursuant to section 25-7-118, requirement of the state implementation plan, provision of this article, or terms or conditions of a permit required pursuant to this article in the district court for the district where the affected air pollution source is located. The court shall issue an appropriate order, which may include a schedule for compliance by the owner or operator of the source.

(c) The order for compliance shall set forth with specificity the final determination of the division regarding the nature and extent of the violation or noncompliance by the named persons and facilities and shall also include, by reference, a summary of the proceedings at the conference held after the notice of violation and an evaluation of the evidence considered by the division in reaching its final determinations. Any order issued under this subsection (3) which is not reviewed by the commission in accordance with the provisions of subsection (4) of this section shall become final agency action.

(4) (a) (I) Within twenty calendar days after receipt of an order issued pursuant to subsection (3) of this section, the recipient thereof may file with the commission a written petition requesting a hearing to determine all or any of the following:

(A) Whether the alleged violation or noncompliance exists or did exist;

(B) Whether a revision of the state implementation plan or revision of a regulation or standard which is not part of the state implementation plan should be implemented with respect to such violation or noncompliance;

(C) Whether the owner or operator is subject to civil or noncompliance penalties under subsection (5) of this section.

(II) Such hearing shall allow the parties to present evidence and argument on all issues and to conduct cross-examination required for full disclosure of the facts and shall otherwise be conducted in accordance with section 25-7-119.

(b) Except with respect to actions taken pursuant to section 25-7-112 or 25-7-113, upon the filing of such petition, the order and the provisions of the state implementation plan which relate to the alleged violation or noncompliance shall be stayed pending determination of the petition by the commission. Any stay pursuant to this paragraph (b) shall be effective only as to the specific source covered by the order and such petition.

(5) (a) (I) Any order issued pursuant to subsection (3) of this section which pertains to an alleged violation described in section 120(a)(2)(A) of the federal act shall also require each person who is subject to such order, within forty-five calendar days after the issuance of such order, to calculate the penalty owed in accordance with paragraph (b) of this subsection (5) and submit the calculation, together with a payment schedule and all information necessary for an independent verification thereof, to the division. If the order has been stayed pursuant to subsection (4) of this section, the penalty calculation shall be submitted by the owner or operator to the division within forty-five calendar days after issuance of a final determination of the commission that:

(A) A violation or noncompliance occurred;

(B) If a revision to the state implementation plan has been requested, all or part of such request should be denied; except that, if only part of such request is denied, the penalty calculation shall not be submitted for any aspect of the violation or noncompliance which is excused by reason of approval of a requested revision of the state implementation plan;

(C) The violation is one described in section 120(a)(2)(A) of the federal act; and

(D) If an exemption pursuant to subsection (7) of this section has been claimed, the owner or operator is not entitled thereto.

(II) The division shall review the penalty calculation and schedule submitted pursuant to subparagraph (I) of this paragraph (a) and shall issue an order assessing the noncompliance penalty and providing a payment schedule therefor.

(b) (I) The amount of the penalty which shall be assessed under this subsection (5) shall be equal to:

(A) The amount, determined in accordance with section 120 of the federal act and rules and regulations promulgated under said act by the United States environmental protection agency, which shall be no less than the sum of the quarterly equivalent of the capital costs of compliance and debt service over a normal amortization period of not longer than ten years, operation and maintenance costs foregone as a result of noncompliance, and any additional value which a delay in compliance beyond July 1, 1979, may have for the owner or operator of such stationary source; less

(B) The amount of any expenditure made by the owner or operator of such stationary source during any such quarter for the purpose of bringing the source into, and maintaining compliance with, such requirement to the extent that such expenditure has not been taken into account in the calculation of the penalty under sub-subparagraph (A) of this subparagraph (I).

(II) To the extent that any expenditure under sub-subparagraph (B) of subparagraph (I) of this paragraph (b) made during any quarter is not subtracted for such quarter from the costs under sub-subparagraph (A) of subparagraph (I) of this paragraph (b), such expenditure may be subtracted for any subsequent quarter from such costs; except that in no event shall the amount paid be less than the quarterly payment minus the amount attributed to the actual cost of construction.

(c) Any penalty assessed pursuant to subsections (5) to (11) of this section shall be paid in equal quarterly installments (except as provided in sub-subparagraph (B) of subparagraph (I) of paragraph (b) of this subsection (5)) for the period which begins either August 7, 1979, if notice pursuant to subsection (2) of this section is issued on or before such date or which begins on the date of issuance of notice pursuant to subsection (2) of this section if such notice is issued after August 7, 1979, and which period ends on the date on which such stationary source is estimated to come into compliance.

(d) Any person who fails to pay the amount of any penalty with respect to any stationary source under this subsection (5) on a timely basis shall be required to pay, in addition, a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to twenty percent of the aggregate amount of such person's penalties and nonpayment penalties with respect to such stationary source which are unpaid as of the beginning of such quarter.

(6) Within twenty calendar days after issuance of an order under subparagraph (II) of paragraph (a) of subsection (5) of this section, the owner or operator may file with the commission a written petition requesting a hearing to review such order. Within sixty calendar days after the filing of such petition, the commission shall hold a hearing and issue a decision thereon.

(7) (a) The owner or operator of any stationary source shall be exempt from the duty to pay a noncompliance penalty pursuant to this section if after notice the owner or operator demonstrates at a hearing that the failure of such stationary source to comply is due solely to:

(I) The conversion by such stationary source from the burning of petroleum products or natural gas, or both, as the primary energy source to the burning of coal pursuant to an order under section 119 of the federal act;

(II) In the case of a coal-burning source granted an extension under section 119 of the federal act, a prohibition from using petroleum products or natural gas, or both, by reason of an order under the provisions of section 2 (a) and (b) of the federal "Energy Supply and Environmental Coordination Act of 1974" or under any legislation which amends or supersedes those provisions;

(III) The use of innovative technology sanctioned by an enforcement order under section 113 (d) (4) of the federal act;

(IV) An inability to comply with such requirements for which the stationary source has received an order pursuant to section 25-7-118, which inability results from reasons entirely beyond the control of the owner or operator of such stationary source or of any entity controlling, controlled by, or under common control with the owner or operator of such stationary source; or

(V) The conditions by reason of which a temporary emergency suspension is authorized under section 110 (f) or (g) of the federal act;

(b) The division may, after notice and opportunity for a public hearing, exempt any stationary source from the duty to pay a noncompliance penalty pursuant to this section with respect to a particular instance of noncompliance if it finds that such instance of noncompliance is inconsequential in nature and duration. Any instance of noncompliance occurring during a period of start-up, shutdown, or malfunction shall be deemed to be inconsequential. If a public hearing is requested by an interested person, the request shall be transmitted to the commission within twenty calendar days of its receipt by the division. The commission shall, within sixty calendar days of its receipt of the request, hold a public hearing with respect thereto and within thirty calendar days of such hearing issue its decision.

(c) An exemption under this subsection (7) shall cease to be effective if the stationary source fails to comply with the interim emission control requirements or schedules of compliance, including increments of progress, under any such extension, order, or suspension.

(8) If the owner or operator of a stationary source who receives an order pursuant to subsection (5) of this section fails to submit a calculation of the penalty, a schedule for payment, and the information necessary for an independent verification thereof, the division may enter into a contract with a person who has no financial interest in the ownership or operation of the stationary source or in any person controlling, controlled by, or under common control with such stationary source to assist in determining the penalty assessment or payment schedule with respect to such stationary source. The cost of such contract may be added to the penalty to be assessed against the owner or operator of such stationary source.

(9) (a) The division or the commission may adjust the amount of the penalty assessment or the payment schedule proposed by the owner or operator if the administrator of the United States environmental protection agency determines that the penalty or schedule does not meet the requirements of the federal act.

(b) Upon making a determination that a stationary source which is subject to a penalty assessment pursuant to this section is in compliance, the division shall review the actual expenditures made by the owner or operator of such stationary source for the purpose of attaining and maintaining compliance and, within one hundred eighty days after such stationary source comes into compliance, shall either provide reimbursement with interest at appropriate prevailing rates for any overpayment by such person or assess and collect any additional payment with interest at prevailing rates for any underpayment by such person.

(10) Any orders, payments, sanctions, or other requirements under this section shall be in addition to any other orders, payments, sanctions, or other requirements of this article.

(11) The division or the commission may request the district attorney for the district in which the alleged violation or noncompliance, or any part thereof, occurred or may request the attorney general to bring, and if so requested it is his duty to bring, a suit for recovery of any penalty or nonpayment penalty, with interest, imposed pursuant to subsection (5) of this section if the penalty is not paid when due.

Source: L. 79: Entire article R&RE, p. 1034, 1, effective June 20. **L. 84:** IP(4)(a), (4)(b), IP(5)(a)(I), (6), (7)(b), (9)(a), and (11) amended, p. 771, 7, effective July 1. **L. 87:** (1) and (2)

amended, p. 1152, 6, effective July 1. **L. 92:** (1)(a), (2), (3)(b), (3)(c), and (4)(a) amended, p. 1217, 19, effective July 1. **L. 97:** (1)(a) amended, p. 1090, 3, effective July 1.

ANNOTATION

Notice of each inspection is required, regardless of when it occurs, even where the alleged violator is already the subject of a cease-and-desist order. *Lloyd A. Fry Roofing Co. v. Air Pollution Variance Bd.*, [191 Colo. 463, 553 P.2d 800](#) (1976).

When notice should be given. A party who is subject to an inspection that may result in a cease-and-desist order is entitled to notice that an inspection has been conducted within a reasonably short period of time following the inspection. *Lloyd A. Fry Roofing Co. v. Air Pollution Variance Bd.*, [191 Colo. 463, 553 P.2d 800](#) (1976).

Due process contemplates that notice should be given of a visual opacity reading by the department of health within a reasonably short period of time following the completion of inspection of air pollution. *Air Pollution Variance Bd. v. W. Alfalfa Corp.*, [191 Colo. 455, 553 P.2d 811](#) (1976).

Because surprise may play a crucial role in the course of some inspections, prior or contemporary notice of the inspection is not required. Basic fairness is achieved in this context by delivering actual notice to a plant manager or officer or agent thereof within a short period of time following the inspection. *Air Pollution Variance Bd. v. W. Alfalfa Corp.*, [191 Colo. 455, 553 P.2d 811](#) (1976).

Investigation of a notice of violation is not a precondition to issuance of a construction permit, because this section addresses enforcement of air quality laws and does not create a separate permitting requirement. *Citizens for Clean Air & Water v. Colo. Dept. of Pub. Health & Env't*, [181 P.3d 393](#) (Colo. App. 2008).

25-7-116. Air quality hearings board. (Repealed)

Source: Entire article R&RE, L.79, p. 1039, 1, effective June 20. **L. 84:** Entire section repealed, p. 768, 1, effective July 1.

25-7-117. State implementation plan - revisions of limited applicability.

(1) The commission, upon application by the owner or operator of a stationary or mobile source or as provided in section [25-7-110](#) (2), may revise the state implementation plan or any regulation or standard that is not part of the state implementation plan pursuant to this section if it determines that:

(a) Control techniques are not available, compliance with applicable emission control regulations would cause an unreasonable economic burden, compliance with applicable emission control regulations through new or improved technology is economically and technologically beneficial, or compliance with applicable emission control regulations would result in an arbitrary and unreasonable taking of property;

(b) The adoption of such revision would be consistent with, and aid in, implementing the legislative policy set forth in section [25-7-102](#); and

(c) In any event, adoption of such revision would be consistent with the requirements of section 110 of the federal act.

(2) Any revision of the state implementation plan or of a regulation or standard which is not part of the state implementation plan pursuant to the provisions of subsection (1) of this section may be adopted for such period of time as shall be specified by the commission.

Source: L. 79: Entire article R&RE, p. 1040, 1, effective June 20. **L. 84:** IP(1) and (2) amended, p. 772, 8, effective July 1. **L. 98:** IP(1) and (1)(a) amended, p. 1014, 1, effective August 5.

25-7-118. Delayed compliance orders.

(1) The division may, after notice and an opportunity for a public hearing, issue an order for any stationary source which specifies a date for final compliance with any requirement of the state implementation plan not later than the date for attainment of any national ambient air quality standard specified in such plan and in no event longer than one year after the date the order was issued, if the requirements of this section are met. If a public hearing is requested by an interested person, the request shall, within twenty days of its receipt, be transmitted to the commission. The commission shall, within sixty days of its receipt of the request, hold a public hearing with respect thereto and, within thirty days of such hearing, issue its decision and order.

(2) An order pursuant to this section may be issued if the order:

(a) Is issued after notice to the public containing the content of the proposed order and after an opportunity for a public hearing thereon;

(b) Contains a schedule and timetable for compliance which requires final compliance as expeditiously as practical, but in no event later than July 1, 1979, or three years after the date for final compliance with such requirement that is specified in the state implementation plan, whichever is later;

(c) In the case of a major stationary source, notifies the source that it will be required to pay a penalty under section [25-7-115](#) in the event such stationary source fails to achieve final compliance by July 1, 1979, or by such later date as is specified in the order in accordance with section [25-7-115](#);

(d) Requires emission monitoring and reporting by the stationary source;

(e) Requires the stationary source to use the best practical system of emission reduction for the period during which such order is in effect and requires the stationary source to comply with such interim requirements as the division or commission determines are reasonable and practical.

(3) If any stationary source not in compliance with any requirement of the state implementation plan gives notice to the division or commission that such stationary source intends to comply by means of replacement of the facility, a complete change in its production process, or a termination of its operations, the division or commission may issue an order under this section permitting the stationary source to operate until July 1, 1979, without any interim schedule of compliance. As a condition of the issuance of any such order, the owner or operator of such stationary source shall post a bond or other surety in an amount equal to the cost of actual compliance by such facility and any economic value which may accrue to the owner or operator of such stationary source by reason of the failure to comply. If the owner or operator of a stationary source for which the bond or other surety required by this subsection (3) has been posted fails to replace the facility, change the production process, or terminate the operations as specified in the order by the required date, the owner or operator shall immediately forfeit on the bond or other surety, and the commission shall have no discretion to modify the order under this subsection (3) or to compromise the bond or other surety.

(4) Any order pursuant to this section shall be terminated if the commission determines, after notice and a hearing, that the inability of the stationary source to comply no longer exists. If the owner or operator of the stationary source to which the order is issued demonstrates that prompt termination of such order would result in undue hardship, the termination shall become effective at the earliest practicable date on which such undue hardship would not result but in no event later than the date required under this section.

(5) (a) If, on the basis of any information available to it, the division has reason to believe that a stationary source to which an order has been issued pursuant to this section is in violation of any requirement of such order or of any provision of this section, it shall notify the commission and the owner or operator of the alleged violation and may revoke such order or may commence an appropriate enforcement action pursuant to this article, or both.

(b) The owner or operator shall respond as provided in section 25-7-115, and, within sixty days after receipt of such notice, the division shall issue a determination thereon. If the division determines that the stationary source is in violation of any requirement of such order or of any provision of this section, it shall revoke such order and enforce compliance with the requirement with respect to which such order was granted or shall order payment of a penalty as provided in section 25-7-115, or both.

(6) During the period of the order issued under this section and when the owner or operator is in compliance with the terms of such order, no other enforcement action pursuant to this article shall be taken against such owner or operator based upon noncompliance during the period the order is in effect with the requirement for the stationary source covered by such order.

(7) Nothing in this section, and no delayed compliance order granted pursuant to this section, shall be construed to prevent or limit the application of the emergency provisions of section 25-7-112 or 25-7-113. No order issued under this subsection (7) shall prevent the state from assessing penalties nor otherwise affect or limit the state's authority to enforce under other provisions of this article.

Source: L. 79: Entire article R&RE, p. 1041, 1, effective June 20. L. 84: (1), (2)(e), (3), and (4) amended, p. 773, 9, effective July 1. L. 92: (1), (5)(a), and (7) amended, p. 1218, 20, effective July 1.

ANNOTATION

Law reviews. For article, "The Limits of the Law: Functional Failures of the Air Pollution Variance Board", see 44 U. Colo. L. Rev. 513 (1974). For article, "Liabilities of Nonoperating Mineral Interest Owners", see 51 U. Colo. L. Rev. 153 (1980).

Applied in *CF&I Steel Corp. v. Colo. Air Pollution Control Comm'n*, 199 Colo. 270, 610 P.2d 85 (1980).

25-7-119. Hearings.

(1) Not less than fifteen calendar days after a hearing has been requested as provided in this article, the commission shall grant such request and set a time and place therefor not more than ninety calendar days following receipt of such request, unless a shorter period is otherwise specifically provided for in this article. Notice of such hearing shall be printed in a newspaper of general circulation in the area in which the proposed project or activity is located at least thirty days prior to the date of said hearing.

(2) The division shall appear as a party in any hearing before the commission and shall have the same rights to judicial review as any other party.

(2.5) The division or the federal environmental protection agency, or both, may appear as parties pursuant to subsection (5) of this section in any hearing before the commission. The federal environmental protection agency is encouraged to participate in the hearing process early and often so that its interpretations are heard. If the federal environmental protection agency does not comply with the provisions of this subsection (2.5), the commission may not receive evidence from such agency in any hearing related to stationary sources conducted pursuant to this section, and any subsequent opinions by such agency shall carry no weight before the commission or in any judicial proceeding.

(3) All testimony taken at any such hearing before the commission shall be under oath or affirmation. A full and complete record of all proceedings and testimony presented shall be taken and filed. The stenographer shall furnish, upon payment and receipt of any fees allowed therefor, a certified transcript of the whole or any part of the record to any party in such hearing requesting the same.

(4) Any information relating to secret processes or methods of manufacture or production which may be required, ascertained, or discovered shall not be publicly disclosed in public hearings or otherwise and shall be kept confidential by any member, officer, or employee of the commission or the division. Any person seeking to invoke the protection of this subsection (4) in any hearing shall bear the burden of proving its applicability. Except as provided in the federal act, information claimed to be related to secret processes or methods of manufacture or production but which constitutes emission data may not be withheld as confidential; except that such information may be submitted under a claim of confidentiality, and the division shall not disclose any such information to the public unless required under the federal act.

(5) At any hearing, any person who is affected by the proceeding and whose interests are not already adequately represented shall have the opportunity to be a party thereto upon prior application to and approval by the commission in its sole discretion, as deemed reasonable and proper by said commission, and such person shall have the right to be heard and to cross-examine any witness.

(6) After due consideration of the written and oral statements, the testimony, and the arguments presented at any such hearing, the commission shall make its findings and order, based upon evidence in the record, or make such determination of the matter as it shall deem appropriate, consistent with the provisions of this article and any rule, regulation, or determination promulgated by the commission pursuant thereto. Unless a time period is otherwise specifically provided for in this article, such finding and order or determination shall be made within thirty calendar days after the completion of such hearing.

(7) In all proceedings before the commission with respect to any alleged violation of any provision of this article, regulation of the commission, order or permit or terms or conditions thereof, or requirement of the state implementation plan, the burden of proof shall be upon the division.

(8) The applicant for a permit or delayed compliance order, or any modification thereof, and the petitioner for any amendment to the state implementation plan shall bear the burden of proof

with respect to the justification therefor and the information, data, and analysis supportive thereof or required with respect to such application or petition.

(9) Repealed.

(10) Every hearing granted by the commission shall be conducted by the commission, and every hearing shall comply with the provisions of this article and the provisions of article 4 of title 24, C.R.S.

Source: **L. 79:** Entire article R&RE, p. 1042, 1, effective June 20. **L. 84:** (1) to (7) and (10) amended and (9) repealed, pp. 774, 768, 10, 1, effective July 1. **L. 87:** (10) amended, p. 971, 84, effective March 13. **L. 92:** (4), (6), and (10) amended, p. 1219, 21, effective July 1. **L. 95:** (2.5) added, p. 1342, 4, effective July 1.

ANNOTATION

Law reviews. For article, "The Limits of the Law: Functional Failures of the Air Pollution Variance Board", see 44 U. Colo. L. Rev. 513 (1974). For article, "Liabilities of Nonoperating Mineral Interest Owners", see 51 U. Colo. L. Rev. 153 (1980).

The board or commission possesses unfettered and sole discretion as to granting intervention. Lloyd A. Fry Roofing Co. v. Air Pollution Variance Bd., [179 Colo. 223](#), [499 P.2d 1176](#) (1972).

Results of visual opacity inspection are admissible. For purposes of a hearing before the air pollution variance board, the results of visual opacity inspection are wholly relevant and admissible. Air Pollution Variance Bd. v. W. Alfalfa Corp., [191 Colo. 455](#), [553 P.2d 811](#) (1976).

Visual opacity tests for air pollution meet minimal due process standards and are not so arbitrary or capricious as to foreclose the finding of a violation based upon such tests alone. Air Pollution Variance Bd. v. W. Alfalfa Corp., [191 Colo. 455](#), [553 P.2d 811](#) (1976).

Questions as to such tests rest in discretion of trier of fact. Any question as to the method of conducting a visual opacity inspection, the qualification of the inspector, or the reliability of the testing procedure rests in the sound discretion of the trier of fact. Air Pollution Variance Bd. v. W. Alfalfa Corp., [191 Colo. 455](#), [553 P.2d 811](#) (1976).

Former subsection (9) did not require review by commission when variance is denied; rather, this section provides that, upon granting of a variance, the commission must review the variance order to determine whether the variance granted interferes with the attainment of the objectives of the air pollution control act. Lloyd A. Fry Roofing Co. v. Air Pollution Variance Bd., [179 Colo. 223](#), [499 P.2d 1176](#) (1972).

Applied in CF&I Steel Corp. v. Colo. Air Pollution Control Comm'n, [199 Colo. 270](#), [610 P.2d 85](#) (1980).

25-7-120. Judicial review.

(1) Any final order or determination by the division or the commission shall be subject to judicial review in accordance with the provisions of this article and the provisions of article 4 of title 24, C.R.S.

(2) Any party may move the court to remand the case to the division or the commission in the interests of justice for the purpose of adducing additional specified and material evidence and findings thereon; but such party shall show reasonable grounds for the failure to adduce such evidence previously before the division or the commission.

(3) Any proceeding for judicial review of any final order or determination of the division or the commission shall be filed in the district court for the district in which is located the air pollution source affected.

Source: **L. 79:** Entire article R&RE, p. 1044, 1, effective June 20. **L. 84:** Entire section amended, p. 775, 11, effective July 1.

ANNOTATION

Law reviews. For article, "The Limits of the Law: Functional Failures of the Air Pollution Variance Board", see 44 U. Colo. L. Rev. 513 (1974). For comment, "Environmental Law -- Requirement of Notice in Visual Opacity Readings -- Air Pollution Variance Bd. v. Western Alfalfa Corp.", 94 S. Ct. 2114 (1974)", see 51 Den. L.J. 603 (1974).

Legislative intent. In prescribing a single local forum for judicial review, the general assembly intended to provide a unified, expedient, and economical means for resolving issues under the air pollution control act. Air Pollution Control Comm'n v. District Court, [193 Colo. 146](#), [563 P.2d 351](#) (1977).

In enacting subsection (3), the general assembly sought to provide a single forum for judicial review of "any" final orders or determinations of the commission, since the legislative judgment was that a single, "local" forum would best ensure proper participation by all those parties which had been joined in the administrative proceeding. Air Pollution Control Comm'n v. District Court, [193 Colo. 146](#), [563 P.2d 351](#) (1977).

Venue in another forum is improper. Where forum for judicial review is properly determined under subsection (3) of this section, venue in another forum under [24-4-106](#) is improper. Air Pollution Control Comm'n v. District Court, [193 Colo. 146](#), [563 P.2d 351](#) (1977).

Every order need not directly affect source. The phrase in subsection (3), "in which is located the air contamination source affected", does not mean that every appealable order or determination arising out of the agency proceeding must directly "affect" the air contamination source. Air Pollution Control Comm'n v. District Court, [193 Colo. 146](#), [563 P.2d 351](#) (1977).

Collateral questions are subject to venue provisions. When an agency proceeding "affects" an air contamination source, then even collateral questions decided in that proceeding will be subject to the venue provisions of subsection (3). Air Pollution Control Comm'n v. District Court, [193 Colo. 146](#), [563 P.2d 351](#) (1977).

Effect of existence of separate ancillary claim. The existence of a separate claim, ancillary to an order properly reviewed under the venue provision of subsection (3), does not create an independent basis for venue in a forum other than that prescribed by subsection (3). Air Pollution Control Comm'n v. District Court, [193 Colo. 146](#), [563 P.2d 351](#) (1977).

25-7-121. Injunctions.

(1) In the event any person fails to comply with a final order of the division, or the commission, that is not subject to stay pending administrative or judicial review, or in the event any person violates any emission control regulation of the commission, the requirements of the state implementation plan, or any provision of parts 1 to 4 of this article, including any term or condition contained in any permit required under this article, the division or the commission, as the case may be, may request the district attorney for the district in which the alleged violation occurs or the attorney general to bring, and if so requested it is his duty to bring, a suit for an injunction to prevent any further or continued violation.

(2) In any proceedings brought pursuant to this section to enforce an order of the division or the commission, a temporary restraining order or preliminary injunction, if sought, shall not issue

if there is probable cause to believe that granting such temporary restraining order or preliminary injunction will cause serious harm to the affected person or any other person and:

(a) That the alleged violation or activity to which the order pertains will not continue or be repeated; or

(b) That granting such temporary restraining order or preliminary injunction would be without sufficient corresponding public benefit.

(3) Notwithstanding any other provision in this section, no action for injunction may be taken where the source has obtained a renewable operating permit and conducts its operations in compliance with the permit terms, as provided in section [25-7-114.4](#) (3).

Source: **L. 79:** Entire article R&RE, p. 1044, 1, effective June 20. **L. 84:** (1) and IP(2) amended, p. 775, 12, effective July 1. **L. 92:** Entire section amended, p. 1220, 22, effective July 1.

ANNOTATION

This section deals only with future conduct. Lloyd A. Fry Roofing Co. v. Air Pollution Variance Bd., [179 Colo. 223](#), [499 P.2d 1176](#) (1972).

Injunctive relief cannot be granted until one violates a final cease-and-desist order, not subject to a stay pending review, which has been issued pursuant to the air pollution control act. Lloyd A. Fry Roofing Co. v. Air Pollution Variance Bd., [179 Colo. 223](#), [499 P.2d 1176](#) (1972).

Or until notice of violation given. An injunction cannot issue until after notice is given of the alleged violation. Lloyd A. Fry Roofing Co. v. Air Pollution Variance Bd., [179 Colo. 223](#), [499 P.2d 1176](#) (1972).

Showing of irreparable injury not necessary. The terms of this section do not dictate that a showing of irreparable injury must be made prior to the granting of an injunction. Lloyd A. Fry Roofing Co. v. Air Pollution Variance Bd., [191 Colo. 463](#), [553 P.2d 800](#) (1976).

A violation of the air quality standards embodies sufficient injury to the public interest to permit the injunctive remedy. Lloyd A. Fry Roofing Co. v. Air Pollution Variance Bd., [191 Colo. 463](#), [553 P.2d 800](#) (1976).

Resolution of inconsistencies with C.R.C.P. 65(d). Where the proceeding is a special statutory proceeding under the air pollution control act, any inconsistency regarding the form and scope of an injunction between C.R.C.P. [65\(d\)](#) and [25-7-102](#) is resolved in favor of the statutory section. Lloyd A. Fry Roofing Co. v. Air Pollution Variance Bd., [191 Colo. 463](#), [553 P.2d 800](#) (1976).

25-7-122. Civil penalties.

(1) Upon application of the division, penalties as determined under this article may be collected by the division by action instituted in the district court for the district in which is located the air pollution source affected in accordance with the following provisions:

(a) (Deleted by amendment, L. 92, p. 1220, 23, effective July 1, 1992.)

(b) Any person who violates any requirement or prohibition of an applicable emission control regulation of the commission, the state implementation plan, a construction permit, any provision for the prevention of significant deterioration under part 2 of this article, any provision related to attainment under part 3 of this article, or any provision of section [25-7-105](#), [25-7-106](#), [25-7-106.3](#), [25-7-106.8](#), [25-7-106.9](#), [25-7-108](#), [25-7-109](#), [25-7-111](#), [25-7-112](#), [25-7-113](#), [25-7-114.2](#), [25-7-114.5](#), [25-7-118](#), [25-7-206](#), [25-7-403](#), [25-7-404](#), [25-7-405](#), [25-7-407](#), [42-4-403](#), [42-4-404](#),

42-4-405, 42-4-406, 42-4-407, 42-4-409, 42-4-410, or 42-4-414, C.R.S., shall be subject to a civil penalty of not more than fifteen thousand dollars per day for each day of such violation; except that there shall be no civil penalties assessed or collected against persons who violate emission regulations promulgated by the commission for the control of odor until a compliance order issued pursuant to section 25-7-115 and ordering compliance with the odor regulation has been violated.

(c) Any person failing to comply with the provisions of section 25-7-114.1 shall be subject to a civil penalty of not more than five hundred dollars.

(d) Any person who violates any requirement, prohibition, or order respecting an operating permit issued pursuant to section 25-7-114.3, including but not limited to failure to obtain such a permit or to operate in compliance with any term or condition thereof or to pay the permit fee required under section 25-7-114.7 (2) or commits a violation of section 25-7-109.6 shall be subject to a civil penalty of not more than fifteen thousand dollars per day for each violation.

(e) Any person who violates any provision of section 25-7-139 shall be subject to a civil penalty of not more than one thousand dollars.

(2) (a) In determining the amount of any civil penalty, the following factors shall be considered:

(I) The violator's compliance history;

(II) Good-faith efforts on behalf of the violator to comply;

(III) Payment by the violator of penalties previously assessed for the same violation;

(IV) Duration of the violation;

(V) Economic benefit of noncompliance to the violator;

(VI) Impact on, or threat to, the public health or welfare or the environment as a result of the violation;

(VII) Malfeasance; and

(VIII) Whether legal and factual theories were advanced for purposes of delay.

(b) In addition to the factors set forth in paragraph (a) of this subsection (2), the following circumstances shall be considered as grounds for reducing or eliminating civil penalties:

(I) The voluntary and complete disclosure by the violator of such violation in a timely fashion after discovery of the noncompliance;

(II) 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;

(III) The existence and scope of a regularized and comprehensive environmental compliance program or an environmental audit program;

(IV) Substantial economic impact of a penalty on the violator;

(V) Nonfeasance; and

(VI) Other mitigating factors.

(c) The imposition of civil penalties may be deferred or suspended where appropriate based on consideration of the factors set forth in this subsection (2).

(3) Notwithstanding any other provision in this section, no action for civil enforcement of this article may be taken where the source has obtained a renewable operating permit and conducts its operations in compliance with the permit terms, as provided in section [25-7-114.4](#) (3).

Source: **L. 79:** Entire article R&RE, p. 1044, 1, effective June 20. **L. 84:** (1)(a) and (1)(b) amended, p. 775, 13, effective July 1. **L. 92:** Entire section amended, p. 1220, 23, effective July 1. **L. 94:** (1)(b) amended, p. 1640, 61, effective May 31; (1)(b) amended, p. 2561, 67, effective January 1, 1995. **L. 2000:** (1)(e) added, p. 763, 2, effective September 1. **L. 2003:** (1)(b) amended, p. 724, 4, effective July 1; (1)(b) amended, p. 1026, 7, effective August 6.

Editor's note: (1) Amendments to subsection (1)(b) by Senate Bill 94-001 and Senate Bill 94-206 were harmonized.

(2) Amendments to subsection (1)(b) by Senate Bill 03-066 and House Bill 03-1053 were harmonized.

ANNOTATION

Legislative intent to impose civil rather than criminal penalties for violation of air pollution control standards is clear from the history of the 1970 air pollution control act. *Lloyd A. Fry Roofing Co. v. Air Pollution Variance Bd.*, [191 Colo. 463](#), [553 P.2d 800](#) (1976).

The express language of the enforcement provisions belies any contention that the general assembly intended this section to effect criminal rather than civil penalties. *Lloyd A. Fry Roofing Co. v. Air Pollution Variance Bd.*, [191 Colo. 463](#), [553 P.2d 800](#) (1976).

Civil penalty cannot be imposed until one violates a final cease-and-desist order, not subject to a stay pending review, which has been issued pursuant to the air pollution control act. *Lloyd A. Fry Roofing Co. v. Air Pollution Variance Bd.*, [179 Colo. 223](#), [499 P.2d 1176](#) (1972).

Nor until notice of violation given. A civil penalty cannot be imposed until after notice is given of the alleged violation. *Lloyd A. Fry Roofing Co. v. Air Pollution Variance Bd.*, [179 Colo. 223](#), [499 P.2d 1176](#) (1972).

No provision for jury determination. The air pollution control act contains no provision for trial by a jury or for penalty assessment by a jury. *Lloyd A. Fry Roofing Co. v. Air Pollution Variance Bd.*, [191 Colo. 463](#), [553 P.2d 800](#) (1976).

25-7-122.1. Criminal penalties.

(1) **General provisions.** (a) Whenever the division has reason to believe that a person has knowingly, as defined in section [18-1-501](#) (6), C.R.S., violated any requirement or prohibition of an applicable emission control regulation of the commission, state implementation plan, permit required under this article, or any provision for the prevention of significant deterioration under part 2 of this article, any provision related to attainment under part 3 of this article, or any provision of section [25-7-105](#), [25-7-106](#), [25-7-106.3](#), [25-7-106.8](#), [25-7-106.9](#), [25-7-108](#), [25-7-109](#), [25-7-111](#), [25-7-112](#), [25-7-113](#), [25-7-114.2](#), [25-7-114.5](#), [25-7-118](#), [25-7-206](#), [25-7-403](#), [25-7-404](#), [25-7-405](#), [25-7-407](#), [42-4-403](#), [42-4-404](#), [42-4-405](#), [42-4-406](#), [42-4-407](#), [42-4-409](#), or [42-4-410](#), C.R.S., the division may request either the attorney general or the district attorney for the district in which the alleged violation occurs to pursue criminal penalties under this section.

(b) Except for those violations identified in paragraph (c) of this subsection (1) and subsections (2) and (3) of this section, any person who knowingly, as defined in section 18-1-501 (6), C.R.S., violates any requirement or prohibition of an applicable emission control regulation of the commission, state implementation plan, permit required under this article, or any provision for the prevention of significant deterioration under part 2 of this article, any provision related to attainment under part 3 of this article, or any provision of section 25-7-105, 25-7-106, 25-7-106.3, 25-7-106.8, 25-7-106.9, 25-7-108, 25-7-109, 25-7-109.6, 25-7-111, 25-7-112, 25-7-113, 25-7-114.2, 25-7-114.5, 25-7-118, 25-7-206, 25-7-403, 25-7-404, 25-7-405, 25-7-407, 42-4-403, 42-4-404, 42-4-405, 42-4-406, 42-4-407, 42-4-409, or 42-4-410, C.R.S., is guilty of a misdemeanor, and upon conviction thereof, may be punished by a fine of not more than twenty-five thousand dollars per day for each day of violation. Upon a second conviction for a violation of this paragraph (b) within two years, the maximum punishment shall be doubled.

(c) Except for those violations identified in paragraph (b) of this subsection (1) and subsections (2) and (3) of this section, any person who knowingly, as defined in section 18-1-501 (6), C.R.S., violates any requirement, prohibition, or order respecting an operating permit issued pursuant to section 25-7-114.3, including but not limited to failure to obtain such a permit or to operate in compliance with any term or condition thereof or to pay the permit fee required under section 25-7-114.7 (2) is guilty of a misdemeanor, and upon conviction thereof, may be punished by a fine of not more than twenty-five thousand dollars per violation per day. Upon a second conviction for a violation of this paragraph (c) within two years, the maximum punishment shall be doubled.

(2) **False statements.** Any person who knowingly, as defined in section 18-1-501 (6), C.R.S., makes any false material statement, representation, or certification in, or omits material information from, or knowingly alters or conceals any notice, application, record, report, plan, or other document required pursuant to this article to be either filed or maintained or falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained or followed under this article is guilty of a misdemeanor, and upon conviction thereof, may be punished by a fine of not more than twelve thousand five hundred dollars for each instance of violation. Upon a second conviction for a violation of this subsection (2) within two years, the maximum punishment shall be doubled.

(3) (a) **Knowing endangerment.** Any person who knowingly, as defined in section 18-1-501 (6), C.R.S., releases into the ambient air any hazardous air pollutant listed pursuant to section 112 of the federal act, or any other hazardous air pollutant as defined by this article, and who knows at the time that such action thereby places another person in imminent danger of death or serious bodily injury is guilty of a felony, and upon conviction thereof, may be punished by a fine of not more than fifty thousand dollars per day for each day of violation, or by imprisonment for not more than four years, or by both such fine and imprisonment. Any person committing such violation which is an organization shall, upon conviction under this subsection (3), be subject to a fine of not more than one million dollars for each such violation. Upon a second conviction for a violation of this subsection (3), the maximum punishment shall be doubled. For any air pollutant for which an emissions standard has been set, or for any source for which an operating permit has been issued under this article, a release of such pollutant in accordance with that standard or permit shall not constitute a violation of this subsection (3).

(b) In determining whether a defendant who is an individual knew that the violation placed another person in imminent danger of death or serious bodily injury:

(I) The defendant is responsible only for actual awareness or actual belief possessed; and

(II) Knowledge possessed by a person other than the defendant, but not by the defendant, may not be attributed to the defendant.

(c) (I) It is an affirmative defense to a prosecution that the conduct charged was freely consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of:

(A) An occupation, a business, or a profession; or

(B) Medical treatment or medical or scientific experimentation conducted by professionally approved methods and such other person had been made aware of the risks involved prior to giving consent.

(II) The defendant may establish an affirmative defense under this paragraph (c) by a preponderance of the evidence.

(d) Any person who negligently, as defined in section [18-1-501](#) (3), C.R.S., violates any requirement or prohibition of an applicable emission control regulation of the commission, state implementation plan, permit required under this article, or any provision for the prevention of significant deterioration under part 2 of this article, is guilty of a misdemeanor and, upon conviction thereof, may be punished by a fine of not more than twelve thousand five hundred dollars per day for each day of violation.

(4) All general defenses, affirmative defenses, and bars to prosecution that may apply with respect to other criminal offenses may apply under this section and shall be determined by the courts of this state according to the principles of common law as they may be interpreted in the light of reason and experience. Concepts of justification and excuse applicable under this section may be developed in the light of reason and experience.

(5) For purposes of this section, unless the context otherwise requires:

(a) "Organization" means a legal entity, other than a government, established or organized for any purpose, and such term includes a corporation, company, association, firm, partnership, joint-stock company, foundation, institution, trust, society, union, or any other association of persons.

(b) "Person" includes, in addition to the entities referred to in section [25-7-103](#) (19), any responsible corporate officer.

(c) "Serious bodily injury" means bodily injury which involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

Source: L. 92: Entire section added, p. 1223, 25, effective July 1. L. 94: (1)(a) and (1)(b) amended, p. 2561, 68, effective January 1, 1995. L. 96: (1)(a) and (1)(b) amended, p. 1472, 21, effective June 1. L. 2003: (1)(a) and (1)(b) amended, p. 725, 5, effective July 1.

25-7-122.5. Enforcement of chlorofluorocarbon regulations.

(1) Whenever the division has reason to believe that any person has violated the rules and regulations promulgated pursuant to section 25-7-105 (11), the division may issue a notice of violation or a cease-and-desist order. Such notice or order shall set forth the rule or regulation alleged to have been violated, the facts constituting such violation, and any measures which the person is required to take. In addition, if the division finds that a person is in violation of any rule or regulation promulgated pursuant to section 25-7-105 (11), it may assess a fine of up to one thousand dollars for each violation.

(2) Any person who has been issued a notice of violation or a cease-and-desist order or who has been ordered to pay a fine may request a hearing before the commission to contest the notice, order, or fine. Such request shall be filed within thirty days after the notice or order has been issued or the fine has been assessed. Upon such request, a hearing shall be held before the commission within a reasonable time.

(3) After a hearing pursuant to subsection (2) of this section, any person aggrieved by the determination of the commission may seek judicial review of the commission's order within thirty days after entry thereof in the district court for the judicial district in which the violation occurred.

(4) All fines collected pursuant to this section shall be transmitted to the state treasurer, who shall credit the same to the general fund.

Source: L. 89: Entire section added, p. 1158, 4, effective May 26.

25-7-122.6. Administrative and judicial stays.

(1) Except with respect to emergency orders issued pursuant to section 25-7-112 and 25-7-113, and delayed compliance orders issued pursuant to section 25-7-118, any person to whom an order has been issued by the division or the commission, or against whom an adverse determination has been made, may petition the commission or the district court for the district in which is located the air pollution source affected, as appropriate, for a stay of the effectiveness of such order or determination.

(2) Such petitions may be filed prior to any such order or determination becoming final or during any period in which such order or determination is under judicial review.

(3) Such stay shall be granted if there is probable cause to believe:

(a) That the movant will suffer irreparable harm if the motion is denied;

(b) That there will be no irreparable harm to human health, welfare, or the environment if the motion is granted; and

(c) That the movant will succeed on the merits of its case.

(4) Such order shall be stayed pending a final determination of the petition.

Source: L. 92: Entire section added, p. 1223, 25, effective July 1.

25-7-123. Open burning - penalties.

(1) (a) The commission shall adopt a program to control open burning in each portion of the state in which such control is necessary in order to carry out the policies of this article, as set forth in section 25-7-102, and to comply with the requirements of the federal act. Such program shall include emission control regulations and the designation, after public hearing and from time to time, of such portions by legal description.

(b) Open burning in the course of agricultural operations may be regulated only where the absence of regulations would substantially impede the commission in carrying out the objectives of this article. In adopting any program applicable to agricultural operations, the commission shall take into consideration the necessity of conducting open burning. For purposes of this section, "agricultural operations" does not include grassland, forest, or habitat management activities of significant users of prescribed fire conducted on lands the primary purpose of which is nonagricultural, unless a person asserts and the commission finds that the absence of regulation would substantially impede the objectives of this article. Such activities shall be deemed "commercial purposes" within the meaning of paragraph (b) of subsection (3) of this section.

(c) No permit shall be issued by the division pursuant to paragraph (a) of subsection (2) of this section after July 1, 2002, unless such permit is consistent with the comments and recommendations of the commission concerning the planning document, as defined in section 25-7-106 (8) (b) (II), applicable to the area to be burned; except that permit conditions may be excluded from a permit if a significant user of prescribed fire demonstrates and the state finds that such conditions are inconsistent with applicable law. The division shall report all such exclusions, within thirty days after they are granted, to the governor and to the director of the legislative council. In no event shall a permit be issued unless a planning document for the area to be burned has been submitted to the commission for review, public hearing, and comment in accordance with section 25-7-106 (8). The commission shall adopt rules to provide for exceptions from the requirements of section 25-7-106 (8) when immediate issuance of a permit is necessary to protect the public health and safety.

(2) (a) Within such designated portions of the state, no person shall burn or permit to be burned on any open premises owned or controlled by such person, or on any public street, alley, or other land adjacent to such premises any rubbish, wastepaper, wood, or other flammable material, unless a permit therefor has first been obtained from the division. In granting or denying the issuance of any such permit, the division shall base its action on the location and proximity of such burning to any building or other structure, the potential contribution of such burning to air pollution in the area, climatic conditions on the day of such burning, and compliance by the applicant for the permit with applicable fire protection and safety requirements of the local authority or area.

(b) In all or any part of any portion of the state designated pursuant to subsection (1) of this section, the prohibition contained in this subsection (2) may be suspended by the commission with respect to any particular type or category of open burning upon a finding that enforcement of the prohibition would neither significantly assist in the prevention, abatement, and control of air pollution nor significantly enhance the quality of the ambient air in such designated area.

(3) (a) Any person who violates paragraph (a) of subsection (2) of this section by burning or permitting any burning for noncommercial purposes without first having obtained a permit as required shall be subject to a civil penalty of up to five hundred dollars per day for each day

during which such a violation occurs. For a second violation, the civil penalty shall be up to one thousand dollars per day for each day during which such a violation occurs. For a third or subsequent violation, the civil penalty shall be up to one thousand five hundred dollars per day for each day during which such a violation occurs.

(b) Any person who violates paragraph (a) of subsection (2) of this section by burning or permitting any burning for commercial purposes without first having obtained a permit as required shall be subject to a civil penalty of not more than ten thousand dollars per day for each day during which such a violation occurs.

Source: **L. 79:** Entire article R&RE, p. 1045, 1, effective June 20. **L. 92:** Entire section amended, p. 1223, 24, effective July 1. **L. 99:** (1)(b) amended and (1)(c) added, p. 790, 3, effective May 24. **L. 2001:** (1)(b) and (1)(c) amended, p. 1185, 3, effective July 1. **L. 2010:** (3)(a) amended, (HB 10-1042), ch. 209, p. 910, 4, effective September 1.

25-7-123.1. Statute of limitations - penalty assessment - criteria.

(1) (a) Any action pursuant to this section not commenced within five years of occurrence of the alleged violation is time barred.

(b) Without expanding the statute of limitations contained in paragraph (a) of this subsection (1), any action pursuant to this article, except those commenced pursuant to section [25-7-122](#) (1) (d) or [25-7-122.1](#) (1) (c), which is not commenced within eighteen months of the date upon which the division discovers the alleged violation is time barred. For purposes of this section, the division discovers the alleged violation when it learns of the alleged violation or should have learned of the alleged violation by the exercise of reasonable diligence, including by receipt of actual or constructive notice.

(c) The five-year period of limitation contained in this section does not apply where information regarding the alleged violation is knowingly or willfully concealed by the alleged violator.

(2) A penalty may be assessed for each day of violation. For purposes of determining the number of days of violation for which a penalty may be assessed under section [25-7-122](#) and [25-7-122.1](#) (1), or an assessment may be made under section [25-7-115](#) (5), where the division has notified the source of the violation, and the division makes a prima facie showing that the conduct or events giving rise to the violation are likely to have continued or recurred past the date of notice, the days of violation shall be presumed to include the date of such notice and each and every day thereafter until the violator establishes that continuous compliance has been achieved, except to the extent that the violator can prove by a preponderance of the evidence that there were intervening days during which no violation occurred or that the violation was not continuing in nature.

(3) The division may request the district attorney for the district in which the alleged violation or noncompliance, or any part thereof, occurred or may request the attorney general to bring, and if so requested, it is the duty of such official to bring a suit for recovery or any penalty or nonpayment penalty, with interest, imposed pursuant to section [25-7-122](#) (civil penalties) or [25-7-122.1](#) (criminal penalties), if the penalty is not paid when due. The division may not revoke a permit issued pursuant to parts 1 to 4 of this article or certification issued pursuant to part 5 of

this article solely for failure to pay penalties when due, unless an order is first issued and all administrative and judicial remedies are pursued unsuccessfully.

Source: **L. 92:** Entire section added, p. 1223, 25, effective July 1.

25-7-124. Relationship with federal government, regional agencies, and other states.

(1) The commission shall serve as the state agency for all purposes of the federal act and regulations promulgated under said act; except that the department of public health and environment shall accept and supervise the administration of loans and grants from the federal government and from other sources, public or private, which are received by the state for air pollution control purposes.

(2) Repealed.

(3) The department of public health and environment may enter into agreements with any air pollution control agencies of the federal government or other states and with regional air pollution control agencies, but any such agreement involving, authorizing, or requiring compliance in this state with any ambient air quality standard or emission control regulation shall not be effective unless or until the commission has held a hearing with respect to such standard or regulation and has adopted the same in compliance with section [25-7-110](#).

Source: **L. 79:** Entire article R&RE, p. 1046, 1, effective June 20. **L. 94:** (1) and (3) amended, p. 2784, 502, effective July 1. **L. 2005:** (2) repealed, p. 282, 19, effective August 8.

Cross references: For the legislative declaration contained in the 1994 act amending subsections (1) and (3), see section 1 of chapter 345, Session Laws of Colorado 1994.

25-7-125. Organization within department of public health and environment.

The air quality control commission, together with the technical secretary under said commission, shall exercise its powers and perform its duties and functions specified in this article in the department of public health and environment as if the same were transferred to the department by a **type 1** transfer, as such transfer is defined in the "Administrative Organization Act of 1968", article [1](#) of title [24](#), C.R.S.

Source: **L. 79:** Entire article R&RE, p. 1046, 1, effective June 20. **L. 84:** Entire section amended, p. 776, 14, effective July 1. **L. 94:** Entire section amended, p. 2784, 503, effective July 1.

Cross references: For the legislative declaration contained in the 1994 act amending this section, see section 1 of chapter 345, Session Laws of Colorado 1994.

ANNOTATION

Law reviews. For article, "Synthetic Fuels -- Policy and Regulation", see 51 U. Colo. L. Rev. 465 (1980).

25-7-126. Application of article.

(1) The factual or legal basis for proceedings or other actions that shall result from a violation of any emission control regulation inure solely to and shall be for the benefit of the people of the state generally, and it is not intended to create by this article, in any way, new or enlarged private rights, or to enlarge existing private rights, or to diminish private rights. A determination that air

pollution exists or that any standard has been disregarded or violated, whether or not a proceeding or action may be brought by the state, shall not create by reason thereof any presumption of law or finding of fact which shall inure to or be for the benefit of any person other than the state.

(2) Other than section [25-7-112](#) or 25-7-113, the provisions of this article and regulations adopted under this article shall not apply to air pollution insofar as such pollution exists within the confines of a particular commercial or industrial plant, works, or shop which is the source of air pollution and shall not apply or affect the relations between employers and employees with respect to or arising out of any condition of air pollution.

(3) It is the purpose of this article to provide additional and cumulative remedies to prevent and abate air pollution. Nothing in this article shall abridge or alter rights of action or remedies existing on June 20, 1979, or after said date, nor shall any provision of this article or anything done by virtue of this article be construed as estopping individuals, cities, towns, counties, cities and counties, or duly constituted political subdivisions of the state from the exercise of their respective rights to suppress nuisances.

Source: L. 79: Entire article R&RE, p. 1046, 1, effective June 20.

25-7-127. Continuance of existing rules and orders.

(1) All rules or amendments to existing rules adopted by the commission on or after June 20, 1979, shall be subject to section [24-4-103](#) (8) (c) and (8) (d) and 24-4-108, C.R.S.

(2) All actions, orders, and determinations by the division and the state board of health pursuant to article 29 of chapter 66, C.R.S. 1963, as that article existed on January 1, 1970, shall remain in full force and effect until countermanded or modified by the division.

(3) All actions, orders, and determinations of the air pollution variance board created by article 29 of chapter 66, C.R.S. 1963, as that article existed on January 1, 1970, shall remain in full force and effect unless countermanded or modified by said board prior to July 1, 1984, or until countermanded or modified by the commission created by this article.

(4) All actions, orders, and determinations of the air pollution variance board created by this article as it existed prior to June 20, 1979, shall remain in full force and effect unless countermanded or modified by said board prior to July 1, 1984, or until countermanded or modified by the commission created by this article.

(5) All actions, orders, and determinations of the air quality hearings board created by this article as this article existed prior to July 1, 1984, shall remain in full force and effect until countermanded or modified by the commission created by this article.

Source: L. 79: Entire article R&RE, p. 1047, 1, effective June 20. **L. 80:** (1) amended, p. 788, 25, effective June 5. **L. 84:** (3) and (4) amended and (5) added, p. 776, 15, effective July 1.

ANNOTATION

Section held not to constitute "ex post facto" law. Lloyd A. Fry Roofing Co. v. State, [179 Colo. 223, 499 P.2d 1176](#) (1972).

25-7-128. Local government - authority - penalty.

(1) Home rule cities, cities, towns, counties, and cities and counties are hereby authorized to enact local air pollution resolutions or ordinances. Every such resolution or ordinance shall provide for hearings, judicial review, and injunctions consistent with section 25-7-118 to 25-7-121 and shall include emission control regulations which are at least the same as, or may be more restrictive than, the emission control regulations adopted pursuant to this article; except that nothing in this article shall prohibit any such local law from controlling any air pollution or air pollution source which is not subject to control under the provisions of this article and except that no permit issued under any local air pollution law with respect to any facility, activity, or process shall ever be construed to relieve any holder thereof from the duty to maintain such facility, activity, or process in compliance with the emission standards and emission control regulations adopted pursuant to this article nor to relieve the division from its duty to enforce such emission standards and emission control regulations with respect to such facility, activity, or process. Any local air pollution standards or regulations submitted and approved as revisions to the state implementation plan shall be enforced as such by the division. In order to assure coordination of efforts to control and abate air pollution, local governmental entities are encouraged to submit their adopted plans and regulations as revisions to the state implementation plan for Colorado.

(2) All local air pollution resolutions and ordinances and orders issued pursuant thereto in existence on March 1, 1979, are validated as though adopted pursuant to the authority of subsection (1) of this section; except that, if any such local resolution, ordinance, or order fails to meet the requirements of this article, the governing body under whose authority such resolution, ordinance, or order was promulgated shall have until July 1, 1979, to amend, modify, or repeal the same so that it will meet the requirements of this article, but, if not so amended, modified, or repealed, the same shall be superseded by this article.

(3) To the extent that a local air pollution resolution adopted by a county is more restrictive than an ordinance adopted by any city or town within such county, the county resolution shall apply in lieu of the city or town ordinance to the extent of the inconsistency.

(4) Any local governmental authority enforcing air pollution control regulations which shall issue any enforcement order or grant any permit shall, at the time of such issuance or granting, transmit to the commission a copy of such order or permit.

(5) Application, operation, and enforcement of valid local air pollution laws shall be completely independent of, but may be concurrent with, the application, operation, and enforcement of this article. The appointment of an air pollution control authority by the division shall in no way affect the duties and responsibilities given the same person or agency under a local air pollution law, and the appointment of an air pollution control authority by a local governmental unit shall in no way affect the duties and responsibilities given the same person or agency by the division.

(6) In order to assure coordination of efforts to control and abate air pollution, at least semiannually the commission and each air pollution control authority created by a local air pollution law shall confer and review each other's records concerning the area subject to such local law and coordinate their respective plans and programs for such area.

(7) No local air pollution control authority shall institute any system or program that:

(a) Conflicts with, or is in any way inconsistent with, air pollution emergency plans promulgated by the governor pursuant to section [25-7-112](#) (2);

(b) Is more stringent than a corresponding state provision with respect to measures to preserve the stratospheric ozone layer;

(c) Is more stringent than a corresponding state provision with respect to hazardous air pollutants; except that this paragraph (c) shall not limit local zoning powers and ordinances enacted pursuant to other authorities under state law;

(d) Does not contain provisions to ensure adequate reimbursement of state compliance and administrative expenses as required by section [25-7-114.7](#) (2) (a) (I) (C);

(e) Is more stringent than a corresponding state provision with respect to asphalt and concrete plants and crushing equipment;

(f) Imposes less restrictive requirements on its own stationary sources than those imposed on similar nongovernmental sources.

(8) Any person who violates any emission standard or emission control regulation adopted by a local governmental entity, where such local government has not submitted its standards or regulations as revisions to the state implementation plan, shall be subject to a civil penalty of not more than three hundred dollars. Each day during which such a violation occurs shall be deemed a separate offense.

Source: **L. 79:** Entire article R&RE, p. 1047, 1, effective June 20. **L. 92:** (7) amended, p. 1228, 26, effective July 1; (7) amended, p. 1293, 4, effective July 1.

Editor's note: Amendments to subsection (7) by Senate Bill 92-105 and House Bill 92-1178 were harmonized.

25-7-129. Disposition of fines and penalties.

All receipts from penalties or fines collected under the provisions of section [25-7-115](#), [25-7-122](#), and [25-7-123](#) shall be credited to the general fund of the state.

Source: **L. 79:** Entire article R&RE, p. 1049, 1, effective June 20.

25-7-130. Motor vehicle emission control studies.

(1) The department of public health and environment, motor vehicle emission control section of the air pollution control division, and the department of revenue shall develop a continuing joint program for the study of the control of motor vehicle exhaust emissions, including emissions from model year 1975 and later models. Such emission control studies shall include such investigations and evaluations of existing and available motor vehicle emission control equipment and technology and the social problems, economic impacts, effectiveness, and costs involved in the use of such technology in motor vehicle emissions inspections and maintenance programs as they may jointly recommend.

(2) (a) The department of public health and environment, motor vehicle emission control section of the air pollution control division, shall develop a pilot program for the purpose of testing a representative sample of motor vehicles with various vehicle emission control

alternatives which may include emission testing and maintenance, air pollution control tune-up, and vehicle modification alternatives as determined by the commission.

(b) Based upon the results of the pilot program and emission control studies, the commission shall develop recommendations for implementing programs of emission testing or mandatory maintenance, or both; air pollution control tune-ups; and vehicle modifications, including altitude modifications and retrofit control systems, for the control of motor vehicle emissions. Such recommendations shall include information on the costs and air pollution control effectiveness of alternate control measures and legislative and regulatory measures necessary to implement an effective program. Any program recommended shall be based upon establishing statewide minimum standards and shall include more stringent standards for motor vehicles registered in air quality control basins defined by the commission.

(3) (Deleted by amendment, L. 96, p. 1259, 156, effective August 7, 1996.)

(4) and (5) Repealed.

Source: L. 79: Entire article R&RE, p. 1049, 1, effective June 20. **L. 84:** (4) and (5) added, p. 1085, 2, effective July 1. **L. 86:** (4)(c) amended, p. 1185, 17, effective May 12. **L. 94:** (1), (2)(a), and IP(4)(a) amended, p. 2784, 504, effective July 1. **L. 96:** (1) and (3) amended, p. 1259, 156, effective August 7.

Editor's note: Subsection (4)(c) provided for the repeal of subsection (4), effective December 31, 1993. (See L. 86, p. 1185.) Subsection (5)(b) provided for the repeal of subsection (5), effective June 30, 1986. (See L. 84, p. 1085.)

Cross references: For the legislative declaration contained in the 1994 act amending subsections (1) and (2)(a) and the introductory portion to subsection (4)(a), see section 1 of chapter 345, Session Laws of Colorado 1994. For the legislative declaration contained in the 1996 act amending subsections (1) and (3), see section 1 of chapter 237, Session Laws of Colorado 1996.

25-7-131. Training programs - emission controls.

(1) (a) State-employed investigators shall complete a training course and pass qualification tests as developed and approved by the commission, after conferring with the department of revenue, as related to the orientation and basic maintenance procedures on air pollution control systems installed by manufacturers. The commission may waive the requirement for completion of such a training course under such circumstances as the commission deems appropriate. Only inspectors passing said qualification tests shall perform emissions inspections. The commission may require that inspection stations have on hand any equipment necessary to complete emissions inspections as provided for in this section.

(b) Repealed.

(1.1) Repealed.

(2) The training programs provided for by this section shall be oriented toward basic motor vehicle air pollution control systems installed in motor vehicles by the manufacturers and shall be made available to motor vehicle mechanics on a voluntary basis in such air quality control areas as the commission may designate in coordination with educational facilities throughout the state in which it may certify to conduct such training.

(3) and (4) Repealed.

Source: L. 79: Entire article R&RE, p. 1049, 1, effective June 20. **L. 81:** (1) amended and (1.1) added, p. 1944, 1951, 6, 20, effective July 1. **L. 84:** (1)(b) and (1.1) repealed, p. 1080, 1, effective July 1. **L. 96:** (3) and (4) repealed, p. 1243, 107, effective August 7.

Cross references: For the legislative declaration contained in the 1996 act repealing subsections (3) and (4), see section 1 of chapter 237, Session Laws of Colorado 1996.

25-7-132. Emission data - public availability.

Notwithstanding any other provisions of this article or any other law to the contrary, all emission data received or obtained by the commission or the division shall be available to the public to the extent required by the federal act.

Source: L. 79: Entire article R&RE, p. 1050, 1, effective June 20. **L. 84:** Entire section amended, p. 776, 16, effective June 20.

25-7-133. Legislative review and approval of state implementation plans and rules - legislative declaration.

(1) Notwithstanding any other provision of law but subject to subsection (7) of this section, by January 15 of each year the commission shall certify in a report to the chairperson of the legislative council in summary form any additions or changes to elements of the state implementation plan adopted during the prior year that are to be submitted to the administrator for purposes of federal enforceability. Such report shall be written in plain, nontechnical language using words with common and everyday meaning that are understandable to the average reader. Copies of such report shall be available to the public and shall be made available to each member of the general assembly. The provisions of this section shall not apply to control measures and strategies that have been adopted and implemented by the enacting jurisdiction of a local unit of government if such measures and strategies do not result in mandatory direct costs upon any entity other than the enacting jurisdiction.

(2) (a) By the February 15 following submission of the certified report under subsection (1) of this section, any member of the general assembly may make a request in writing to the chairperson of the legislative council that the legislative council hold a hearing or hearings to review any addition or change to elements of the SIP contained in the report submitted pursuant to subsection (1) of this section. Upon receipt of such request, the chairperson of the legislative council shall forthwith schedule a hearing to conduct such review. Any review by the legislative council shall determine whether the addition or change to the SIP element accomplishes the results intended by enactment of the statutory provisions under which the addition or change to the SIP element was adopted. The legislative council, after allowing a public hearing preceded by adequate notice to the public and the commission, may recommend the introduction of a bill or bills based on the results of such review. If the legislative council does not recommend introduction of a bill under this subsection (2), the addition or change to the SIP element may be submitted under paragraph (b) of this subsection (2). Any bill recommended for consideration under this subsection (2) shall not be counted against the number of bills to which members of the general assembly are limited by law or joint rule of the senate and the house of representatives. If the legislative council does not recommend the introduction of a bill under this paragraph (a), and the member or members of the general assembly that requested such review will be introducing a bill under the provisions of paragraph (c) of this subsection (2), any such

member shall provide written notice to the chairperson of the legislative council within three days after the action by the legislative council not to recommend introduction of a bill. If such member or members provide such written notice, the addition or change to the SIP or any element thereof that is the subject of any such bill may not be submitted to the administrator of the federal environmental protection agency until the expiration of the addition or change to the SIP has been postponed by the general assembly acting by bill or the member or members provide written notice to the chairperson of the executive committee of the legislative council that no bill will be introduced.

(b) Unless a written request for legislative council review of an addition or change to a SIP element is submitted by the February 15 following submission of the report under subsection (1) of this section, or a notice is provided by a member or members that they are introducing a bill under paragraph (c) of this subsection (2) within three days after legislative council action not to introduce a bill under paragraph (a) of this subsection (2), all other additions or changes to a SIP element described in such report shall be submitted to the administrator for final approval and incorporation into the SIP.

(c) Until such February 15 as provided in paragraph (b) of this subsection (2), the commission may only submit an addition or change to the SIP or any element thereof, as defined in section 110 of the federal act, any rule which is a part thereof, or any revision thereto as specified in subsection (1) of this section to the administrator for conditional approval or temporary approval. If legislative council review is requested as to any addition or change to a SIP element under paragraph (a) of this subsection (2), then no such SIP, revision, rule required by the SIP or revision, or rule related to the implementation of the SIP or revision so submitted to the administrator may take effect for purposes of federal enforceability, or enforcement of any kind at the state level against any person or entity based only on the commission's general authority to adopt a SIP under section [25-7-105](#) (1), unless expiration of the SIP, rule required for the SIP, or addition or change to a SIP element has been postponed by the general assembly acting by bill in the same manner as provided in section [24-4-103](#) (8) (c) and (8) (d), C.R.S. Any member of the general assembly may introduce a bill to modify or delete all or a portion of the SIP or any rule or additions or changes to SIP elements which are a component thereof. Any bill introduced under this paragraph (c) shall not be counted against the number of bills to which members of the general assembly are limited by law or joint rule of the senate and the house of representatives. Any committee of reference of the senate or the house of representatives to which a bill introduced under this paragraph (c) is referred shall conduct as part of consideration of any such bill on the merits the review provided for under paragraph (a) of this subsection (2). If any bill is introduced under paragraph (a) of this subsection (2) or under this paragraph (c) to postpone the expiration of any addition or change to a SIP element described in a report submitted under subsection (1) of this section, and any such bill does not become law, the addition or change to a SIP element addressed in such bill may be submitted to the administrator of the federal environmental protection agency for final approval and incorporation into the SIP under paragraph (b) of this subsection (2).

(d) Repealed.

(3) In order to further the goals of section [25-7-105.1](#) in assuring that nonfederally required rules or policies are not submitted to the administrator for inclusion in a SIP, the commission shall, effective July 1, 1995, with respect to any rule or any portion thereof not required by the

federal act or which is otherwise more stringent in whole or in part than requirements of the federal act, ensure that the public notice and the general statement of such rule's basis, specific statutory authority, and purpose required by section 24-4-103, C.R.S., in connection with the commission's proposal and promulgation of such rule shall also specifically identify what portion of such rule is not required by provisions of the federal act or is otherwise more stringent than requirements of the federal act.

(4) (a) The general assembly recognizes that the commission must exercise discretion in selecting from available options in developing a cost effective SIP which attains or maintains national ambient air quality standards.

(b) On or before November 15 of each year, the commission, in coordination with designated organizations for air quality planning in local areas, shall provide the legislative council:

(I) A comprehensive listing of additions or changes to elements of the SIP that the commission and local areas will consider during the following calendar year;

(II) The projected schedule for local action and commission consideration of such measures;

(III) (Deleted by amendment, L. 2000, p. 187, 1, effective March 22, 2000.)

(IV) The statutory deadline, if any, for submittal to the administrator of the change or addition to elements of the SIP and the corresponding federal sanctions or consequences for failure to submit the change or addition to elements of the SIP by the deadline under the federal act; and

(V) A brief description of the principal technical and policy issues and available options presented for decision in each addition or change to elements of the SIP.

(c) The commission, in coordination with designated organizations for air quality planning in local areas, shall communicate regularly with the legislative council regarding each of the SIP elements or revisions thereto scheduled for adoption and submission to the administrator of the United States environmental protection agency.

(5) The information required by paragraph (b) of subsection (4) of this section shall be submitted to the legislative council in the form and manner and accompanied by supporting materials prescribed by the legislative council.

(6) This section is exempt from the provisions of section 24-1-136 (11), C.R.S., and the periodic reporting requirement of this section shall remain in effect until changed by the general assembly acting by bill.

(7) (a) (Deleted by amendment, L. 2003, p. 1973, 1, effective May 22, 2003.)

(b) Any revisions to the automobile inspection and readjustment program area pursuant to section 42-4-304 (20) (d), C.R.S., that delete specific regions within that portion of the AIR program area that is approved for incorporation into the state implementation plan shall be submitted to the federal environmental protection agency as expeditiously as possible and shall not be subject to further review and approval pursuant to this section; except that the commission shall submit a report pursuant to subsection (1) of this section.

(c) Repealed.

(d) (I) The commission shall request the governor to submit the plan adopted by the commission on March 12, 2004, to reduce the amount of pollutants emitted that create ozone pollution to the federal environmental protection agency for approval and incorporation into the state implementation plan. Passage of this paragraph (d) is in lieu of, and said plan shall be deemed to have satisfied, all review requirements under this section.

(II) A regulated entity that is required to comply with the amendments to regulation number 7 adopted by the air quality control commission on March 12, 2004, to reduce emissions of volatile organic compounds from atmospheric condensate storage tanks shall:

(A) Provide advance notice of the location where it intends to install an emission control unit; and

(B) Indicate whether such unit exceeds the height of the existing equipment at the facility.

(III) The regulated entity shall deliver the notice required pursuant to subparagraph (II) of this paragraph (d) to the local government designee, if any, registered with the Colorado oil and gas conservation commission for receipt of information relating to oil and gas operations within a local jurisdiction, and shall include a phone number for a contact person. If the local jurisdiction does not have a local government designee, the notice shall be provided to the municipal clerk.

(IV) The local government shall, within ten business days after receipt of the notice, notify the regulated entity whether the local government objects to the intended installation of the emission control unit. The objection shall be based on site-specific land use issues and may not be made on a blanket basis to every proposed emission control unit installation within a local jurisdiction. If the local government fails to object within ten business days after submission of the notice, the local jurisdiction is presumed to have approved the installation of the specified emission control unit, and the regulated entity may commence such installation.

(V) If a local government designee notifies a regulated entity of its objection within ten business days after receipt of the notice of installation of an emission control unit, the regulated entity and the local jurisdiction shall endeavor to informally resolve the matter within an additional ten business days. If such attempt fails, the local jurisdiction shall have ten business days to petition the air quality control commission for an adjudicatory hearing pursuant to section [24-4-105](#), C.R.S., which petition shall be granted by the commission. The hearing shall be held and the matter decided by the commission or a hearing officer designated by the commission within forty-five calendar days after receipt of the petition by the commission. In ruling on the objection, the commission shall have the authority only to uphold or deny the objection.

(VI) The commission shall determine the procedures and criteria that govern its review of local government objections to the installation of emission control units at atmospheric condensate storage tank facilities, and the process provided thereby shall be the exclusive procedure for such disputes. No other local permit or land use approval shall be required for the installation of such emission control units.

Source: L. 79: Entire section added, p. 1552, 15, effective June 20. **L. 95:** Entire section R&RE, p. 1150, 2, effective May 31. **L. 2000:** (1), (2), (4)(b)(I), (4)(b)(III), (4)(b)(IV), (4)(b)(V), (4)(c), and (6) amended, p. 187, 1, effective March 22. **L. 2002:** (1) amended and (7) added, p. 1263, 1, effective June 4. **L. 2003:** (7) amended, p. 1973, 1, effective May 22; (7) amended, p.

1358, 2, effective August 6. **L. 2004:** (7)(d) added, p. 772, 1, effective May 20. **L. 2013:** (2)(c) amended, (HB 13-1300), ch. 316, p. 1688, 77, effective August 7.

Editor's note: (1) Subsection (2)(d)(II) provided for the repeal of subsection (2)(d), effective July 1, 2001. (See L. 2000, p. 187.) Subsection (7)(c)(IV) provided for the repeal of subsection (7)(c), effective December 31, 2003. (See L. 2003, p. 1973.)

(2) Amendments to subsection (7) by House Bill 03-1313 and House Bill 03-1340 were harmonized.

25-7-133.5. Approval or rescission of specific revisions to state implementation plan (SIP) after 1996.

(1) Consistent with the provisions of section [25-7-105.1](#), to the extent senate bill 96-129 and senate bill 96-236, enacted at the second regular session of the sixtieth general assembly, approved submitting portions of air quality control commission regulation 1, section VI, to the federal environmental protection agency for inclusion in the state implementation plan, such approval is hereby rescinded. The inclusion of said regulation 1 in the Denver metropolitan nonattainment area state implementation plan for particulate matter (PM-10) is not affected by this rescission.

(2) Pursuant to section [25-7-133](#), the following revisions to the state implementation plan (SIP), which were adopted by the air quality control commission on the dates indicated and received by the legislative council for review, are approved for incorporation into the state implementation plan:

(a) The 1993 periodic emissions inventory update to the Denver metropolitan, Colorado Springs, Longmont, and Fort Collins carbon monoxide nonattainment area elements of the SIP, adopted by the air quality control commission on December 21, 1995;

(b) The emergency episode plan revisions as a part of the Denver PM-10 nonattainment area element of the SIP, adopted by the air quality control commission on January 18, 1996;

(c) Amendments adopted by the air quality control commission on September 19, 1996, to the Greeley carbon monoxide nonattainment area element of the SIP;

(d) Amendments adopted by the air quality control commission on October 17, 1996, to the Canon City PM-10 nonattainment area element of the SIP;

(e) Amendments adopted by the air quality control commission on October 17, 1996, to the Steamboat Springs PM-10 nonattainment area element of the SIP;

(f) Amendments adopted by the air quality control commission on March 21, 1996, and June 20, 1996, to regulation number 3, concerning air pollution emission notice deferral, insignificant activities, and fugitive emissions;

(g) Amendments adopted by the air quality control commission on June 20, 1996, to regulation number 3, concerning prevention of significant deterioration permits, total suspended particulates, and hydrogen sulfide;

(h) Amendments adopted by the air quality control commission on October 14, 1996, to regulation number 10, concerning general conformity;

(i) Amendments adopted by the air quality control commission on March 21, 1996, to regulation number 11, concerning the inspection and maintenance program;

(j) Repealed.

(k) Amendments adopted by the air quality control commission on October 24, 1996, to regulation number 5, concerning the generic banking emissions/trading rules and conforming revisions to regulation number 3, part 4, section V;

(l) Amendments adopted by the air quality control commission on December 21, 1995, to regulations number 1 and 7, and the common provisions concerning negligibly reactive volatile organic compounds and delisting of acetone;

(m) Amendments adopted by the air quality control commission on December 23, 1996, to regulation number 1, concerning opacity limitations and sulfur dioxide averaging provisions for coal-fired electric utility boilers during periods of startup, shutdown, and upset;

(n) Repealed.

(o) Amendments adopted by the air quality control commission on April 17, 1997, to the motor vehicle emissions inspection program in all carbon monoxide nonattainment areas in the state (Boulder, Colorado Springs, Denver, and Greeley) under the carbon monoxide nonattainment area element of the SIP;

(p) Amendments adopted by the air quality control commission on January 15, 1998, redesignating Colorado Springs as an attainment area for carbon monoxide and adopting a corresponding maintenance plan;

(q) Amendments adopted by the air quality control commission on December 18, 1997, to the Longmont carbon monoxide maintenance plan;

(r) Amendments adopted by the air quality control commission on April 17, 1997, concerning long-term strategy for the element of the SIP relating to visibility in class I areas;

(s) Amendments adopted by the air quality control commission on November 21, 1996, to regulations number 3, 7, and 8 and common provisions, concerning negligibly reactive volatile organic compounds and regulated hazardous air pollutants;

(t) Amendments adopted by the air quality control commission on September 17, 1998, to regulation number 1, section II. D., concerning military smokes and obscurants training exercises;

(u) Amendments adopted by the air quality control commission on October 15, 1998, to regulation number 7, concerning emissions of volatile organic compounds;

(v) Amendments adopted by the air quality control commission on October 15, 1998, to regulation number 10, concerning conformity of federally funded or approved transportation plans with air quality implementation plans;

(w) Amendments adopted by the air quality control commission on November 19, 1998, to regulation number 11, part F (III), concerning the motor vehicle emissions inspection program for the Denver-Boulder area;

(x) Amendments adopted by the air quality control commission on January 16, 1998, to regulation number 12, concerning reduction of diesel vehicle emissions;

(y) Repealed.

(z) Amendments adopted by the air quality control commission on January 16, 1998, to section 1.11.0 of the procedural rules of the air pollution control division;

(aa) Amendments adopted by the air quality control commission on September 17, 1998, concerning ambient air quality standards for suspended particulate matter; and

(bb) (I) The "Colorado Visibility and Regional Haze State Implementation Plan for the Twelve Mandatory Class I Federal Areas in Colorado", adopted by the air quality control commission on January 7, 2011.

(II) The automatic expiration of the rules contained in the plan specified in subparagraph (I) of this paragraph (bb) that were adopted on January 7, 2011, and that are therefore scheduled for expiration on May 15, 2012, is postponed, effective May 15, 2011.

(3) Revisions to the SIP that are adopted solely to conform the SIP to prior actions of the general assembly under section [25-7-133](#) and this section may be submitted to the federal environmental protection agency for final approval under section [25-7-133](#) (2) without further approval by the general assembly under section [25-7-133](#) or this section.

(4) If the division and the designated organization for air quality planning in the Colorado Springs area request removal of mandatory control measures that have been adequately demonstrated to be unnecessary to achieve and maintain compliance with the federal ambient air quality standards and request corresponding modifications to the mobile source emission budget, the commission shall adopt such revisions to the carbon monoxide maintenance plan for the Colorado Springs area approved pursuant to paragraph (p) of subsection (2) of this section. Notwithstanding section [25-7-133](#), such revisions shall be submitted to the federal environmental protection agency for incorporation into the state implementation plan as expeditiously as possible and shall not be subject to further review and approval pursuant to section [25-7-133](#).

(5) Revisions to the visibility component of the SIP that implement and enforce a control strategy that meets the following requirements may be submitted to the United States environmental protection agency for incorporation into the SIP as expeditiously as possible without further review and approval pursuant to section [25-7-133](#):

(a) On or before November 1, 2001, one or more sources have entered into a consent decree in which such sources make a judicially enforceable commitment to adopt such control strategy; and

(b) The division determines that such control strategy provides for reasonable progress:

(I) Toward the national visibility goal stated in federal rules set forth at 40 CFR part 51, subpart P, and in rules of the division set forth at 5 CCR 1001-5, as said rules provided on January 1, 2001; and

(II) In reducing any present or future impairment of an air-quality-related value.

(6) Notwithstanding the provisions of section [25-7-133](#), revisions to the Denver metropolitan area element of the PM-10 state implementation plan adopted by the commission on April 19, 2001, are approved for incorporation into the state implementation plan, shall be submitted to the

federal environmental protection agency as expeditiously as possible, and shall not be subject to further review and approval pursuant to section [25-7-133](#).

Source: **L. 97:** Entire section added, p. 381, 1, effective April 19; (2)(n) and (3) added, pp. 1528, 1530, 1, 2, effective June 3. **L. 98:** (2)(o), (2)(p), (2)(q), (2)(r), (2)(s), and (4) added, pp. 1009, 1010, 1, 2, effective May 27. **L. 99:** (2)(j) and (2)(y) repealed, (2)(r) amended, and (2)(t) through (2)(aa) added, pp. 1244, 1243, 2, 3, 1, effective July 1. **L. 2001:** (5) added, p. 208, 1, effective March 28; (6) added, p. 900, 1, effective June 1. **L. 2011:** (2)(bb) added, (HB 11-1291), ch. 144, p. 501, 2, effective May 4; (2)(n) repealed, (HB 11-1303), ch. 264, p. 1166, 62, effective August 10.

Cross references: For the legislative declaration in the 2011 act adding subsection (2)(bb), see section 1 of chapter 144, Session Laws of Colorado 2011.

25-7-134. Study of air quality control programs. (Repealed)

Source: **L. 89:** Entire section added, p. 1159, 4, effective May 26. **L. 93:** (1) and (2) amended, p. 1924, 5, effective July 1. **L. 94:** (1), (2), and (4) amended, p. 2562, 69, effective January 1, 1995. **L. 96:** Entire section repealed, p. 1259, 158, effective August 7.

Cross references: For the legislative declaration contained in the 1996 act repealing this section, see section 1 of chapter 237, Session Laws of Colorado 1996.

25-7-135. Ozone protection fund created.

(1) There is hereby created in the state treasury an ozone protection fund, which shall consist of fees collected pursuant to section [25-7-105](#) (11). In accordance with section [24-36-114](#), C.R.S., all interest derived from the deposit and investment of moneys in the fund shall be credited to the general fund. Any moneys not appropriated by the general assembly shall remain in the ozone protection fund and shall not be transferred or revert to the general fund of the state at the end of any fiscal year.

(2) (Deleted by amendment, L. 2003, p. 723, 2, effective July 1, 2003.)

Source: **L. 92:** Entire section added, p. 1294, 5, effective July 1. **L. 94:** (1) amended, p. 2785, 505, effective July 1. **L. 98:** (2) amended, p. 1335, 50, effective June 1. **L. 2003:** Entire section amended, p. 723, 2, effective July 1.

Cross references: For the legislative declaration contained in the 1994 act amending subsection (1), see section 1 of chapter 345, Session Laws of Colorado 1994.

25-7-136. Air pollution data collection and technical evaluation - repeal. (Repealed)

Source: **L. 95:** Entire section added, p. 1118, 1, effective May 31. **L. 96:** IP(3)(a), (3)(a)(I), (3)(b)(I)(A), (3)(b)(II), and (4) amended and (3)(a.5) and (3.5) added, pp. 800, 802, 1, 2, effective May 23.

Editor's note: Subsection (4) provided for the repeal of this section, effective July 1, 1999. (See L. 96, p. 802.)

25-7-137. Requirements for legislative approval of Grand Canyon visibility transport commission or successor body advisory recommendations, reports, and interpretations.

(1) The general assembly hereby finds, determines, and declares:

(a) That the Grand Canyon visibility transport commission (GCVTC) was created pursuant to section 169B of the federal act to issue a report directed toward protecting visibility in the Grand Canyon national park;

(b) That the GCVTC's tasks assigned under the federal act have been completed, and a successor body is being proposed;

(c) That protecting visibility is important to the people of Colorado, is an interstate issue, and is highly technical, complex, and subject to varying interpretations; and

(d) That the provisions of this section are enacted to preserve Colorado sovereignty and to enhance public notice and awareness of the GCVTC or its successor bodies' advisory recommendations, reports, or interpretations, and to ensure public confidence in the fairness of the implementation of any Colorado requirements.

(2) The governor or the governor's designee is encouraged to attend and participate in the successor body to the GCVTC. A stakeholder process shall be implemented to include representatives of the general assembly. The governor shall provide an annual report of the activities of the GCVTC or its successor bodies to the general assembly until such time as the governor has forwarded to the federal environmental protection agency notification that the state shall comply with the provisions of Title 40, code of federal regulations, part 51.308, adopted in accordance with the federal act. The goal of this process is to protect the interest of Colorado over air quality issues.

(3) No final recommendation or report or other action of the GCVTC or its successor bodies may impose any new or different requirements upon the regulated community or citizens of the state of Colorado unless approved or enacted by the general assembly acting by bill.

Source: L. 97: Entire section added, p. 1625, 1, effective August 6. **L. 2000:** (2) amended, p. 1552, 29, effective August 2.

25-7-138. Housed commercial swine feeding operations - waste impoundments - odor emissions - fund created.

(1) All new or expanded anaerobic process wastewater vessels and impoundments, including, but not limited to, treatment or storage lagoons, constructed or under construction for use in connection with a housed commercial swine feeding operation as defined in section [25-8-501.1](#) (2) (b) shall be covered, or operated with technologies or practices that are as effective as covers at minimizing odor from the operation, to capture, recover, incinerate, or otherwise manage odorous gases to minimize, to the greatest extent practicable, the emission of such gases into the atmosphere. The housed commercial swine feeding operation shall submit to the department of public health and environment information sufficient to demonstrate that the technologies and practices used are as effective as covers at minimizing odor from the operation. The housed commercial swine feeding operation shall manage odor emissions such that odor emissions from the operation shall not be detected at or beyond the property boundary after the odorous air has been diluted with seven volumes of odor-free air. The housed commercial swine feeding operation shall manage odor emissions such that odor emissions from the operation shall not be detected at any off-site receptor after the odorous air has been diluted with two volumes of

odor-free air. For purposes of this section, "receptor" means any occupied dwelling used as a primary dwelling or its curtilage, a public or private school, or a place of business. As used in this section, "anaerobic" means a waste treatment method that, in whole or in part, does not utilize air or oxygen. All new aerobic impoundments shall employ technologies to ensure maintenance of aerobic conditions or otherwise to minimize the emission of odorous gases to the greatest extent practicable. As used in this section, "aerobic" means a waste treatment method that utilizes air or oxygen.

(2) All existing anaerobic process wastewater vessels and impoundments, including, but not limited to, aeration tanks and treatment or storage lagoons, owned or operated for use in connection with a housed commercial swine feeding operation as defined in section 25-8-501.1 (2) (b) shall be covered, or operated with technologies or practices that are as effective as covers at minimizing odor from the operation, to capture, recover, incinerate, or otherwise manage odorous gases to minimize, to the greatest extent practicable, the emission of such gases into the atmosphere. The housed commercial swine feeding operation shall submit to the department of public health and environment information sufficient to demonstrate that the technologies and practices used are as effective as covers at minimizing odor from the operation. The housed commercial swine feeding operation shall manage odor emissions such that odor emissions from the operation shall not be detected at or beyond the property boundary after the odorous air has been diluted with seven volumes of odor-free air. The housed commercial swine feeding operation shall manage odor emissions such that odor emissions from the operation shall not be detected at any off-site receptor after the odorous air has been diluted with two volumes of odor-free air. For purposes of this section, "receptor" means any occupied dwelling used as a primary dwelling or its curtilage, a public or private school, or a place of business. All existing aerobic impoundments shall employ technologies to ensure maintenance of aerobic conditions or otherwise to minimize the emission of odorous gases to the greatest extent practicable.

(3) The commission shall, by rules promulgated on or before March 1, 1999, require that all housed commercial swine feeding operations employ technology to minimize to the greatest extent practicable off-site odor emissions from all aspects of its operations, including odor from its swine confinement structures, manure and composting storage sites, and odor and aerosol drift from land application equipment and sites.

(4) No new land waste application site or new waste impoundment used in connection with a housed commercial swine feeding operation, shall be located less than:

(a) One mile from an occupied dwelling without the written consent of the owner of the dwelling;

(b) One mile from a public or private school without the written consent of the school's board of trustees or board of directors; and

(c) One mile from the boundaries of any incorporated municipality without the consent of the governing body of the municipality by resolution. As used in this subsection (4), a new land waste application site and new waste impoundment are those that were not in use as of June 1, 1998.

(5) The division shall enforce the provisions of this section. The division may delegate enforcement of the provisions of this section to any county or district public health agency. If the division delegates enforcement of this section, the division shall monitor the actions of any

county or district public health agency as such actions pertain to enforcement of this section. The division shall assess a housed commercial swine feeding operation an annual fee, not to exceed seven cents per animal, based on the operation's working capacity, to offset the division's direct and indirect costs of enforcement, compliance, and regulation pursuant to this section. This fee shall be designated to fund an inspection and complaint response and enforcement program. By mutual agreement, any county or district public health agency that assists in enforcement of this section shall receive funding to conduct inspections and respond to complaints. As used in this subsection (5), "working capacity" means the number of swine the housed commercial swine feeding operation is capable of housing at any one time. In addition, any person who may be adversely affected by a housed commercial swine feeding operation may enforce these provisions directly against the operation by filing a civil action in the district court in the county in which the person resides.

(6) All moneys collected pursuant to this section shall be transmitted to the state treasurer, who shall credit the same to the housed commercial swine feeding operation fund, which fund is hereby created in the state treasury. The moneys in such fund shall be subject to annual appropriation by the general assembly for the purposes of this section, including the reimbursement of county or district public health agencies for assistance in the enforcement of this section. Any interest earned on moneys in the fund shall remain in the fund and shall not revert to the general fund at the end of any fiscal year.

Source: Initiated 98: Entire section added, effective upon proclamation of the Governor, December 30, 1998. **L. 2005:** (2) and (3) amended, p. 282, 20, effective August 8. **L. 2006:** (1), (2), and (5) amended and (6) added, p. 1105, 1, effective May 25. **L. 2010:** (5) and (6) amended, (HB 10-1422), ch. 419, p. 2103, 118, effective August 11.

Editor's note: (1) This section was contained in an initiated measure that was adopted by the people at the general election held November 3, 1998. The measure enacting this section was effective upon proclamation of the Governor, December 30, 1998.

(2) The vote count on the measure at the general election held November 3, 1998, was as follows:

FOR: 790,852

AGAINST: 438,873

ANNOTATION

Law reviews. For article, "Colorado's Not-So-Little Pig Farms Meet the Big Bad Wolf", see 28 Colo. Law. 85 (June 1999).

25-7-139. Methyl tertiary butyl ether - prohibition - phase-out - civil penalty.

(1) The general assembly finds and declares that methyl tertiary butyl ether ("MTBE") is an oxygenate used in gasoline and other fuel products in this state and in the United States. The general assembly also finds that MTBE may leak into and contaminate groundwater supplies, and that MTBE is water soluble and therefore is difficult and costly to remove from water. MTBE is colorless, tastes and smells like turpentine, and can be tasted and detected by smell at extremely low concentrations. MTBE may be a human carcinogen and poses other potential health risks, including but not limited to memory loss, asthma, and skin irritation.

(2) The general assembly further finds and declares that water is precious and vital to this state's growing population, agricultural industry, and unique environment. Therefore it is the

intent of the general assembly in enacting this section to halt further contamination and pollution of this state's groundwater supplies by MTBE.

(3) (a) (I) Except as otherwise provided in this paragraph (a), a person may not sell, offer for sale, or store any fuel product containing or treated with MTBE.

(II) The provisions of this paragraph (a) shall not apply if the presence of MTBE in a fuel product is caused solely by incidental commingling of MTBE with the fuel product during storage or transfer of the fuel product. In no event shall the provisions of this subsection (3) be construed to permit the knowing or willful addition of MTBE to any fuel product.

(b) (Deleted by amendment, L. 2005, p. 283, 21, effective August 8, 2005.)

(c) For purposes of this section, "fuel product" means gasoline, reformulated gasoline, benzene, naphtha, benzol, and kerosene and any other volatile and inflammable liquid that is produced, compounded, and offered for sale or used for the purpose of generating power in internal combustion engines or generating heat or light or used for cleaning or for any other similar usage.

(4) Any person who violates the provisions of this section shall be subject to a civil penalty as provided in section [25-7-122](#) (1) (e).

Source: L. 2000: Entire section added, p. 762, 1, effective September 1. **L. 2005:** (3)(a)(I) and (3)(b) amended, p. 283, 21, effective August 8.

PART 2

PREVENTION OF SIGNIFICANT DETERIORATION PROGRAM

25-7-201. Prevention of significant deterioration program.

(1) It is the policy of this state to prevent the significant deterioration of air quality in those portions of the state where the air quality is better than the national ambient air quality standards by means including, but not limited to, the following:

(a) Except as provided in section [25-7-209](#), in areas designated as Class I, II, or III, pursuant to this article and in accordance with the federal act, increases allowed in air pollutant concentrations over the baseline concentration from the construction of major stationary sources or from major modifications shall, in the case of particulate matter and sulfur dioxide, be the same as those increases established by section 163(b) of the federal act and shall, in the case of any other air pollutants, be the same as those increases established pursuant to section 166(a) of the federal act. For any period other than an annual period, the applicable maximum allowable increase may be exceeded during one such period per year at any one location.

(b) No concentration of an air pollutant shall exceed a national ambient air quality standard.

(c) No major stationary source or major modification shall be constructed unless the requirements of this part 2, as applicable, have been met.

Source: L. 79: Entire article R&RE, p. 1050, 1, effective June 20. **L. 81:** (1)(c) amended, p. 1306, 1, effective May 29.

ANNOTATION

Law reviews. For article, "Pollution or Resources Out-of-Place: Reclaiming Municipal Wastewater for Agricultural Use", see 53 U. Colo. L. Rev. 559 (1982). For article, "The Colorado Prevention of Significant Deterioration of Air Quality Program", see 12 Colo. Law. 1983 (1983).

25-7-202. Definitions. (Repealed)

Source: L. 79: Entire article R&RE, p. 1051, 1, effective June 20. **L. 81:** (4)(a), (4)(b), IP(4)(c), (4)(c)(VII), (4)(d), and (5) to (7) amended and (4)(c) and (6.5) added, pp. 1306, 1308, 2, 3, effective May 29. **L. 84:** (2) amended, p. 776, 17, effective July 1. **L. 92:** Entire section repealed, p. 1233, 41, effective July 1.

25-7-203. State implementation plan - contents.

In accordance with Part C (Prevention of Significant Deterioration) of the federal act and this part 2, the commission shall incorporate in the state implementation plan emission limitations, requirements for employment of best available control technology, and such other measures as may be necessary to prevent significant deterioration of ambient air quality in each region, or portion thereof, of the state identified pursuant to section 107(d)(1)(D) or (E) of the federal act.

Source: L. 79: Entire article R&RE, p. 1053, 1, effective June 20.

25-7-204. Exclusions.

(1) The requirements of the state implementation plan for prevention of significant deterioration of ambient air quality shall not apply to a major stationary source or major modification with respect to a particular pollutant if the owner or operator demonstrates that:

(a) As to the pollutant, the source or modification is subject to part 3 of this article, and the source or modification would impact no area attaining the national ambient air quality standards (either internal or external to areas designated as nonattainment under section 107 of the federal act); or

(b) (Deleted by amendment, L. 92, p. 1229, 27, effective July 1, 1992.)

(c) Such emissions would be from a temporary activity which will not have an adverse impact on air quality in any class I area or an area where an allowable increase over the baseline concentration is known to be violated; except that such temporary activities shall be subject to requirements related to the employment of best available control technology; or

(d) Such emissions would not be significant.

(2) The following pollutant concentrations shall be excluded in determining compliance with maximum allowable increases:

(a) Concentrations attributable to the increase in emissions from sources which have converted from the use of petroleum products, natural gas, or both, by reason of an order in effect under sections (2) (a) and (b) of the federal "Energy Supply and Environmental Coordination Act of 1974" (or any superseding legislation) over the emissions from such sources before the effective date of such an order, but not more than five years after the effective date of such an order;

(b) Concentrations attributable to the increase in emissions from sources which have converted from using natural gas by reason of a natural gas curtailment plan in effect pursuant to the

federal "Power Act" over the emissions from such sources before the effective date of such plan but not more than five years after the effective date of the plan; and

(c) (Deleted by amendment, L. 92, p. 1229, 27, effective July 1, 1992.)

(d) Concentrations of particulate matter attributable to an increase in emissions from temporary activity.

Source: L. 79: Entire article R&RE, p. 1053, 1, effective June 20. **L. 81:** (1)(c) amended and (1)(d) and (2) added, p. 1308, 4, 5, effective May 29. **L. 92:** (1)(b), (2)(b), and (2)(c) amended, p. 1229, 27, effective July 1.

Cross references: For the "Energy Supply and Environmental Coordination Act of 1974", see Pub.L. 93-319, codified at 15 U.S.C. sec. 791 et seq.

25-7-205. Innovative technology - waivers.

The division or the commission may grant a waiver from the best available control technology requirements of this part 2 for proposed new or modified sources in order to encourage the use of an innovative technological system or systems of continuous emission reduction if the administrator of the United States environmental protection agency has delegated such authority and if the division or the commission determines, after notice and opportunity for public hearing, and after securing the consent of the governor of an affected state, to the extent that such consent may be lawfully required by the federal act, that such innovative technological system or systems of continuous emission reduction have a substantial likelihood of achieving greater continuous emission reduction than the means of emission limitation which, but for such waiver, would be required, or of achieving continuous emission reduction equivalent to that which, but for such waiver, would be required, at a lower cost in terms of energy or economic or nonair quality environmental impact. If a public hearing is requested by an interested person, the request shall, within twenty days after its receipt, be transmitted to the commission. The commission shall, within sixty days after its receipt of the request, hold a public hearing with respect thereto and shall, within thirty days after such hearing, issue its decision.

Source: L. 79: Entire article R&RE, p. 1053, 1, effective June 20. **L. 84:** Entire section amended, p. 777, 18, effective July 1. **L. 92:** Entire section amended, p. 1229, 28, effective July 1.

25-7-206. Procedure - permits.

(1) Applications for a proposed new or modified source subject to the requirements of this part 2, or any additions to such applications, shall be processed by the division and the commission as provided in section [25-7-114](#) to [25-7-114.7](#).

(2) The owner or operator of a proposed source or modification shall submit all information determined by the division to be reasonably necessary to perform any analysis or make any determination required under this part 2.

(3) The division shall transmit to the administrator of the United States environmental protection agency a copy of each permit application relating to a major stationary source or major modification. Thereafter, the division and the commission shall provide notice to the

administrator of the United States environmental protection agency of every action related to the consideration of such permit.

Source: L. 79: Entire article R&RE, p. 1053, 1, effective June 20. L. 84: (1) and (3) amended, p. 777, 19, effective July 1. L. 92: (1) amended, p. 1230, 29, effective July 1.

25-7-207. Exemptions. (Repealed)

Source: L. 79: Entire article R&RE, p. 1054, 1, effective June 20. L. 92: Entire section repealed, p. 1230, 30, effective July 1.

25-7-208. Area designations.

(1) Except as provided in section [25-7-209](#), all areas of the state shall initially be designated as provided in section 162 of the federal act.

(2) To the extent permitted by section 164 of the federal act, the commission may redesignate any area in the state as a Class I, Class II, or Class III area. The commission shall promulgate rules and regulations in conformity with article 4 of title 24, C.R.S., establishing the procedures for such redesignations; except that:

(a) Such procedures shall be uniform for all redesignations;

(b) Any redesignation may be adopted by the commission only after reasonable notice and public hearing;

(c) All redesignations, except any established by an Indian governing body, shall be specifically approved by the governor, after consultation with the appropriate committees of the general assembly if it is in session or with the leadership of the general assembly if it is not in session, and by resolutions or ordinances enacted by the general purpose unit of local government representing a majority of the residents of the area to be redesignated;

(d) Any redesignation shall constitute a revision to the state implementation plan and shall be submitted to the administrator of the United States environmental protection agency.

(3) Any redesignations or any denial of an application for redesignation made pursuant to subsection (2) of this section shall be subject to judicial review in accord with section [25-7-120](#).

Source: L. 79: Entire article R&RE, p. 1054, 1, effective June 20.

25-7-209. Colorado designated pristine areas for sulfur dioxide.

(1) In the following areas which were designated Colorado category I for sulfur dioxide by the commission on October 27, 1977, the increase allowed in sulfur dioxide concentrations over the baseline concentration shall be the same as the increase established by section 163(b) of the federal act for Class I areas:

(a) National parks:

(I) Rocky mountain;

(II) Mesa Verde;

(III) Great sand dunes;

(IV) Black canyon of the Gunnison;

(b) National monuments:

(I) Florissant fossil beds;

(II) (Deleted by amendment, L. 2009, (SB 09-292), ch. 369, p. 1971, 87, effective August 5, 2009.)

(III) Colorado;

(IV) Dinosaur;

(V) (Deleted by amendment, L. 2009, (SB 09-292), ch. 369, p. 1971, 87, effective August 5, 2009.)

(c) Forest service wilderness areas:

(I) Eagles nest;

(II) Flattops;

(III) La Garita;

(IV) Maroon bells - Snowmass;

(V) Mount Zirkel;

(VI) Rawah;

(VII) Weminuche;

(VIII) West elk;

(d) Forest service primitive areas:

(I) Uncompahgre mountain;

(II) Wilson mountain;

(e) Lands administered by the federal bureau of land management in the Gunnison gorge recreation area as of October 27, 1977.

Source: L. 79: Entire article R&RE, p. 1054, 1, effective June 20. L. 2009: (1)(a) and (1)(b) amended, (SB 09-292), ch. 369, p. 1971, 87, effective August 5.

ANNOTATION

This section's designation of 18 category 1 areas for sulfur dioxide increments which matched Class I increments under federal clean air act clearly intended for variance procedure allowed in [25-7-207](#) to be part of a program to prevent significant deterioration of air quality and to extend class I protection to Colorado's previously designated category I areas. *Environ. Def. Fund v. State Dept. of Health*, [731 P.2d 773](#) (Colo. App. 1986).

25-7-210. Applicability.

Sections [25-7-201](#) and 25-7-203 to 25-7-206 shall apply only to applications for proposed new major stationary sources and major modifications which are submitted on or after the date of

approval by the United States environmental protection agency of the program for prevention of significant deterioration embodied in the state implementation plan.

Source: L. 79: Entire article R&RE, p. 1055, 1, effective June 20. **L. 92:** Entire section amended, p. 1230, 31, effective July 1.

25-7-211. Visibility impairment attribution studies.

(1) Any visibility impairment reasonable attribution study pertaining to class I areas shall be subject to balanced peer review by a panel including scientists with appropriate expertise who do not have any substantive involvement with any party, shall be site-specific with respect to any suspected source of impairment and to any impacted area, shall be conducted under the oversight of the division, including, but not limited to, determination of deadlines for such study, and shall utilize study design and data collection and analytical techniques, including, but not limited to, contemporaneous ambient air quality, visibility, and meteorological sampling that allows correlation of the data relevant to any such study. With the exception of emissions from agricultural, horticultural, or floricultural activities that are exempted under section [25-7-109](#) (8), relevant data shall include a reasonable assessment of the contributions of emissions from reasonably identifiable sources, including natural sources, within the state and region. Any remedy selection must include relevant economic impact data. In order to minimize delay in the process, the study shall proceed as expeditiously as sound science will allow. The cost of any such study shall not be required to be paid by the department of public health and environment.

(2) Nothing in subsection (1) of this section, as amended by House Bill 05-1180, as enacted at the first regular session of the sixty-fifth general assembly, shall be construed as changing the property tax classification of property owned by a horticultural or floricultural operation.

Source: L. 94: Entire section added, p. 1615, 1, effective May 31; entire section amended, p. 2619, 32, effective July 1. **L. 2005:** Entire section amended, p. 349, 6, effective August 8.

Cross references: For the legislative declaration contained in the 1994 act amending this section, see section 1 of chapter 345, Session Laws of Colorado 1994.

25-7-212. Actions of federal government affecting visibility - evaluation report.

(1) As a part of the state's ongoing development and implementation of a long-term strategy in connection with visibility and air quality related values within class I areas, the division shall evaluate the extent to which the activities of the federal government are directly adversely impacting visibility and air quality related values within a class I area and make a determination whether such entities have taken or are taking all reasonable steps necessary to remedy that impact. At any time, the division may make, and a federal land manager shall respond to, reasonable requests for information necessary for the division to perform such regulation.

(2) The joint public hearing required under section [25-7-105](#) (4) (a) shall report on the results of the evaluation required under subsection (1) of this section.

(3) (a) The general assembly hereby finds, determines, and declares, after reviewing the factors that contribute to regional haze and visibility impairment in Colorado, that significant contributions to regional haze and visibility impairment emanate from federal lands within the state of Colorado and from federal lands in other parts of the west. For the purpose of addressing regional haze visibility impairment in Colorado's mandatory class I federal areas, the federal land

manager of each such area shall develop a plan for evaluating visibility in that area by visual observation or other appropriate monitoring technique approved by the federal environmental protection agency and shall submit such plan for approval to the division for incorporation by the commission as part of the state implementation plan. Such submittal and compliance by the federal land managers shall be done in a manner and at a time so as to meet all present or future federal requirements for the protection of visibility in any mandatory class I federal area. Such plan shall only be approved by the commission if the expense of implementing such a plan is borne by the federal government.

(b) (I) In addition to the plan submitted by each federal land manager pursuant to paragraph (a) of this subsection (3), the responsible federal land management agency shall provide an emission inventory to the commission of all federal land management activities in Colorado or other states that result in the emission of criteria pollutants, including surrogates or precursors for such pollutants, that affect any mandatory class I federal area in Colorado by reducing visibility in such an area. Such emission inventory shall be submitted to the commission no later than December 31, 2001, and no less frequently than every five years thereafter.

(II) Each emission inventory submitted to the commission shall be subject to approval by the commission pursuant to section [25-7-105](#) (17). The commission shall exempt from the inventory requirement any sources or categories of sources that it determines to be of minor significance.

(III) The commission shall adopt rules to fully implement the general assembly's intention to exercise state powers to the maximum extent allowed under section 118 of the federal act in requiring each federal land management agency with any presence in the state of Colorado to develop and submit to the division an inventory of emissions from lands, wherever situated, which could have any effect on visibility within mandatory class I federal areas located in Colorado. The commission and the division shall use the information from these emission inventories:

(A) To develop control strategies for reducing emissions within the state of Colorado as a primary component of the visibility long-term strategies for inclusion in the state implementation plan;

(B) In any environmental impact statement or environmental assessment required to be performed under the federal "National Environmental Policy Act of 1969", 42 U.S.C. secs. 4321 to 4347; and

(C) To exercise all powers and processes that exist to seek reductions in emissions outside the state of Colorado that reduce visibility in Colorado mandatory class I federal areas.

(IV) The cost of preparing and submitting inventories pursuant to subparagraph (I) of this paragraph (b) shall be borne by the federal government.

Source: **L. 94:** Entire section added, p. 1392, 4, effective May 25. **L. 96:** (2) amended, p. 1258, 151, effective August 7. **L. 98:** (3) added, p. 115, 1, effective August 5. **L. 99:** (3) amended, p. 1248, 2, effective June 2.

Cross references: For the legislative declaration contained in the 1994 act amending this section, see section 1 of chapter 246, Session Laws of Colorado 1994. For the legislative declaration contained in the 1996 act amending this section, see section 1 of chapter 237, Session Laws of Colorado 1996.

25-7-213. Visibility and air quality related values policy task force. (Repealed)

Source: L. 94: Entire section added, p. 1392, 4, effective May 25.

Editor's note: Subsection (4) provided for the repeal of this section, effective July 1, 1995. (See L. 94, p. 1392.)

25-7-214. Visibility impairment subcommittee. (Repealed)

Source: L. 97: Entire section added, p. 933, 1, effective May 21.

Editor's note: (1) Subsection (2) provided for the repeal of this section, effective January 1, 1998. (See L. 97, p. 933.)

(2) This section was enacted as 25-7-215 but was renumbered on revision for ease of location.

PART 3 ATTAINMENT PROGRAM

25-7-301. Attainment program.

(1) The commission shall develop a program providing for the attainment and maintenance of each national ambient air quality standard in each nonattainment area of the state, in conformity with and as provided in Part D (Nonattainment Program) of the federal act.

(2) Subject to the requirement of subsection (1) of this section:

(a) The attainment program shall be designed to account for and regulate all significant sources of air pollution, including stationary, mobile, and indirect sources, and shall assure that air quality benefits of the control measures utilized bear a reasonable relationship to economic, environmental, and energy impacts and other costs of such measures; and

(b) Control measures required pursuant to the attainment program shall take into consideration the respective contributions of different categories of sources to air pollution, existing control measures, and the availability and feasibility of additional control measures.

Source: L. 79: Entire article R&RE, p. 1055, 1, effective June 20.

25-7-302. State implementation plan - contents.

The attainment program embodied in the state implementation plan may, with respect to proposed new or modified major stationary sources within nonattainment areas which would cause or contribute to a violation of a national ambient air quality standard, provide an allowance for growth while providing reasonable further progress toward attainment, and new sources may be allowed that do not result, individually or in the aggregate, in emissions that exceed the allowance. Particulate matter not of a size or substance to adversely affect public health or welfare shall not be considered in determining whether any applicable growth allowance has been consumed. Modifications to an existing facility within a source may be allowed which are accompanied by emission reduction offsets within the same source sufficient to provide no net increase in emissions of an air pollutant from the source. If an applicable growth allowance has been consumed, the attainment program shall permit sources to be constructed only if emission reduction offsets providing a greater than one-for-one emission reduction are obtained from existing sources sufficient to provide reasonable further progress toward attaining the applicable

national ambient air quality standards by the attainment date prescribed under Part D (Nonattainment Program) of the federal act. Any emission offsets required for sulfur dioxide, particulates, and carbon monoxide shall provide a positive net air quality benefit in the area affected by the proposed source.

Source: L. 79: Entire article R&RE, p. 1056, 1, effective June 20.

25-7-303. Exemptions. (Repealed)

Source: L. 79: Entire article R&RE, p. 1056, 1, effective June 20. **L. 92:** Entire section repealed, p. 1230, 32, effective July 1.

25-7-304. Emission reduction offsets.

The attainment program shall provide that emission reduction offsets which exceed those otherwise necessary to the granting of a permit under this part 3 may be preserved for sale or use in the future. Any emission reduction offset so preserved for future use and credit shall be specifically identified either in the state implementation plan or in the permit for the source as to which such offset was originally obtained. Any offsets so preserved and identified shall not in any way be condemned or taken under the provisions of articles 1 to 7 of title 38, C.R.S.

Source: L. 79: Entire article R&RE, p. 1056, 1, effective June 20.

25-7-305. Alternative emission reduction.

The attainment program shall provide that upon application of the owner or operator of a stationary source, the commission may approve as a revision to the state implementation plan a proposal to meet the applicable requirements of the state implementation plan for a given air pollutant for two or more facilities or operations within such source through a combination of different requirements which separately may be more or less stringent than the applicable requirements of the state implementation plan; except that the total emissions from such facilities or operations shall not exceed the total emissions allowed by the applicable requirements of the state implementation plan.

Source: L. 79: Entire article R&RE, p. 1057, 1, effective June 20. **L. 84:** Entire section amended, p. 777, 20, effective July 1.

PART 4 CONTROL OF POLLUTION CAUSED BY WOOD SMOKE

25-7-401. Legislative declaration.

The general assembly hereby declares that it is in the interest of the state to control, reduce, and prevent air pollution caused by wood smoke. It is therefore the intent of this part 4 to significantly reduce particulate and carbon monoxide emissions caused by burning wood by developing an evaluation and certification program, in the department of public health and environment, for the sale of wood stoves in Colorado and by encouraging the air quality control commission to continue efforts to educate the public about the effects of wood smoke and the desirability of achieving reduced wood smoke emissions. The general assembly hereby finds that it is beneficial to the state to implement a program of voluntary no-burn days whenever the air

quality control division determines that the anticipated level of wood smoke will or is likely to have an adverse impact on the air quality in any nonattainment area in the state.

Source: L. 84: Entire part added, p. 779, 1, effective April 12. **L. 94:** Entire section amended, p. 2785, 506, effective July 1.

Cross references: For the legislative declaration contained in the 1994 act amending this section, see section 1 of chapter 345, Session Laws of Colorado 1994.

25-7-402. Definitions.

As used in this part 4, unless the context otherwise requires:

(1) "Evaluate" means to review wood-burning appliances' emission levels, as determined by an independent testing laboratory, and compare the emission levels to the emission performance standards established by the commission under section [25-7-403](#).

(2) and (3) Repealed.

Source: L. 84: Entire part added, p. 779, 1, effective April 12. **L. 87:** (2) repealed, p. 1144, 10, effective June 16; (3) repealed, p. 1144, 10, effective July 1.

25-7-403. Commission - rule-making for wood-burning stoves.

(1) The commission shall promulgate rules and regulations to carry out the provisions of this part 4 relating to wood-burning stoves in conformity with the provisions and procedures specified in article 4 of title 24, C.R.S., and which shall become effective only as provided in said article.

(2) (a) In promulgating such rules and regulations, the commission shall:

(I) Set emission performance standards for new wood stoves;

(II) Establish criteria and procedures for testing new wood stoves for compliance with the emission performance standards;

(III) Prescribe the form and content of the emission performance label to be attached to a new wood stove meeting the emission performance standards;

(IV) Establish procedures for administering the program and for collecting fees for the certification of new wood stoves;

(V) Establish fees for certifying new wood stoves at a level such that said fees reflect the direct and indirect costs of administering the program less any general fund or federal grant moneys appropriated to cover the start-up costs of the program;

(VI) Repealed.

(VII) Establish a definition for new wood stoves; and

(VIII) Establish exemptions from the provisions of this subsection (2) of the extent that such exemptions are appropriate.

(b) The moneys collected under this subsection (2) shall be transmitted to the state treasurer, who shall credit the same to the stationary sources control fund established in section [25-7-](#)

114.7 (2) (b). Any moneys not appropriated by the general assembly shall be retained in the stationary sources control fund and shall not revert to the general fund at the end of any fiscal year.

Source: L. 84: Entire part added, p. 780, 1, effective April 12. **L. 87:** (1) and (2)(a)(V) amended, (2)(a)(VI) repealed, and (2)(a)(VII) and (2)(a)(VIII) added, pp. 1140, 1141, 1144, 2, 3, 10, effective June 16. **L. 92:** (2)(b) amended, p. 1231, 33, effective July 1.

25-7-404. Wood stove testing program established.

(1) There is hereby established, in the department of health, an evaluation and certification program for the control of air pollution caused by wood stove emissions, which is designed to significantly reduce particulate and carbon monoxide emissions, referred to in this part 4 as the "program".

(2) The program as implemented by rules and regulations as set forth in section [25-7-403](#) shall be administered by the air quality control division. The said division shall establish a program that:

(a) Determines whether or not any new wood stove complies with the emission performance standards set by the commission when tested by an independent testing laboratory;

(b) If such new wood stove complies with the emission performance standards, certifies such compliance.

(3) On or after July 1, 1985, a wood stove manufacturer or dealer may request the air quality control division to evaluate the emissions performance of any new wood stove.

(4) Repealed.

Source: L. 84: Entire part added, p. 780, 1, effective April 12. **L. 2005:** (4) repealed, p. 283, 22, effective August 8.

25-7-405. Certification required for sale.

(1) On or after January 1, 1987, a person shall not advertise to sell, offer to sell, or sell a new wood stove in Colorado unless:

(a) The particular model of wood stove or the particular configuration of wood stove appliance has been evaluated to determine its emission performance and has been certified by the air quality control division under the program established under this part 4; and

(b) An emission performance label is attached to the wood stove.

Source: L. 84: Entire part added, p. 781, 1, effective April 12.

25-7-405.5. Resale of used noncertified wood-burning devices - prohibited.

On and after January 1, 1993, no used wood-burning device shall be sold or installed in the program area unless such device meets the most stringent standards adopted by the commission pursuant to section [25-7-106.3](#) (1).

Source: L. 92: Entire section added, p. 1282, 2, effective May 27; entire section added, p. 1324, 3, effective May 27.

Editor's note: Amendments to this section by Senate Bill 92-137 and House Bill 92-1321 were harmonized.

25-7-406. Fireplace design program.

The air pollution control division shall establish a program to study the ways that differences in the structural design of fireplaces affect emissions. The objective of this program will be to determine those structural designs of fireplaces which effectively minimize emissions. The division shall conduct performance tests of different fireplace designs to identify those designs that minimize emissions.

Source: L. 84: Entire part added, p. 781, 1, effective April 12.

25-7-407. Commission - rule-making for fireplaces.

(1) to (7) Repealed.

(8) On and after January 1, 1993, any new or remodeled fireplace to be installed in any dwelling in an area subject to wood-burning limitations provided for in section [25-7-106.3](#) shall be one of the following:

(a) A gas appliance;

(b) An electric device; or

(c) A fireplace or fireplace insert that meets the most stringent emissions standards for wood stoves established by the commission, or any other clean burning device that is approved by the commission.

(9) No regulation promulgated by the commission in accordance with subsection (8) of this section shall apply to any municipality or a county in the AIR program that has in effect, on and after January 1, 1993, an ordinance or building code provision substantially equivalent to the requirement set forth in subsection (8) of this section, as determined by the commission.

(10) Repealed.

Source: L. 84: Entire part added, p. 781, 1, effective April 12. **L. 87:** Entire section R&RE, p. 1141, 4, effective June 15. **L. 92:** (8), (9), and (10) added, p. 1281, 1, effective May 27; (8), (9), and (10) added, p. 1323, 2, effective May 27; (6) amended, p. 1231, 34, effective July 1. **L. 93:** (10) repealed, p. 1787, 69, effective June 6.

Editor's note: (1) Amendments to subsection (9) by Senate Bill 92-137 and House Bill 92-1321 were harmonized.

(2) Subsection (10) provided for the repeal of subsections (1) to (7), effective January 1, 1993. (See L. 92, pp. 1281, 1323.)

25-7-407.5. Certification required for sale. (Repealed)

Source: L. 87: Entire section added, p. 1142, 5, effective June 16. **L. 92:** Entire section amended, p. 1283, 4, effective May 27; entire section amended, p. 1325, 5, effective May 27.

Editor's note: Subsection (2) provided for the repeal of this section, effective January 1, 1993. (See L. 92, pp. 1283, 1325.)

25-7-408. Required compliance in building codes.

(1) (a) Repealed.

(b) On and after January 1, 1993, every board of county commissioners of a county in the AIR program area which has enacted a building code, and thereafter every board of county commissioners of a county in the AIR program area which enacts a building code, shall, pursuant to section 30-28-201 (2), C.R.S., adopt a building code provision requiring any person who installs or constructs any fireplace to comply with section 25-7-407 (8).

(2) (a) Repealed.

(b) On and after January 1, 1993, every governing body of a municipality in the AIR program area which has enacted a building code, and thereafter every governing body of a municipality in the AIR program area which enacts a building code, shall, pursuant to section 31-15-601 (2), C.R.S., adopt a building code provision requiring any person who installs or constructs any fireplace to comply with section 25-7-407 (8).

(3) Nothing in this article shall prevent a board of county commissioners or a governing body of a municipality from enacting a building code which requires more stringent standards for wood stoves and for fireplaces, if such standards are necessary and reflect technology suitable for commercial application within the meaning of section 25-7-407 (1).

Source: L. 84: Entire part added, p. 781, 1, effective April 12. **L. 87:** Entire section amended, p. 1143, 6, effective June 16. **L. 92:** (1) and (2) amended, p. 1282, 3, effective May 27; (1) and (2) amended, p. 1324, 4, effective May 27.

Editor's note: (1) Amendments to subsections (1) and (2) by Senate Bill 92-137 and House Bill 92-1321 were harmonized.

(2) Subsections (1)(a)(II) and (2)(a)(II) provided for the repeal of subsections (1)(a) and (2)(a), respectively, effective January 1, 1993. (See L. 92, pp. 1282, 1324.)

25-7-409. Voluntary no-burn days.

Whenever the air quality control division determines, after investigation, that the level of wood stove emissions anticipated will contribute adversely or is likely to have an adverse impact on the air quality in any nonattainment area in the state, the commission should implement and announce a program of voluntary no-burn days.

Source: L. 84: Entire part added, p. 782, 1, effective April 12.

25-7-410. Applicability.

The provisions of this part 4 do not apply to a used wood stove and shall not apply to any fireplace constructed prior to the date established in section 25-7-407.

Source: L. 84: Entire part added, p. 782, 1, effective April 12. **L. 87:** Entire section amended, p. 1143, 7, effective June 16. **L. 2005:** Entire section amended, p. 772, 49, effective June 1.

25-7-411. Legislative declaration.

(1) The general assembly hereby finds, determines, and declares that air pollution in the state of Colorado is a threat to the health and welfare of its citizens and that a major contributor to said pollution is wood smoke, which accounts for twenty-five to forty percent of the brown cloud, fifteen to thirty percent of small particulate matter, hereafter referred to as PM 10, up to ten percent of carbon monoxide, and a portion of toxic, cancer-causing chemicals.

(2) The general assembly further finds, determines, and declares that PM 10 particulates created by wood burning threaten the public health in that said particulates are so small that they lodge in persons' lungs and inhibit the body's pulmonary function. Such pollutant is particularly damaging to persons with lung disease, cardiovascular disease, and chronic upper respiratory conditions, to the very young and elderly, and to pregnant women. The brown cloud is a threat to the economic health of the state because it discourages businesses and tourists from coming to Colorado. Wood burning is one of the most easily controllable sources of air pollution. New technologies can dramatically reduce pollution caused by wood burning. In addition, the reduction of wood burning can reduce the amount of fine particulate emissions into the air.

(3) Therefore, the general assembly finds that it is necessary to implement a plan to further reduce wood smoke emissions in the AIR program area and, therefore, enacts section [25-7-411](#) to [25-7-413](#) to encourage and promote the reduction of wood-burning devices and the use of less polluting devices by taking advantage of new technology.

Source: L. 92: Entire section added, p. 1319, 1, effective May 27.

25-7-412. Definitions.

As used in section [25-7-411](#) to [25-7-413](#), unless the context otherwise requires:

(1) "Fireplace insert" means any wood-burning device designed to be installed in an existing fireplace which meets the Phase III standard, as such term is defined in subsection (2) of this section.

(2) "Phase III wood stove" means any wood-burning device that meets the most stringent standards adopted by the commission pursuant to section [25-7-106.3](#) (1) or any nonaffected wood-burning device that is approved by the commission.

(3) "Program area" means the portions of the six counties in the AIR program area, including Adams, Arapahoe, Boulder, Denver, Douglas, and Jefferson counties.

Source: L. 92: Entire section added, p. 1320, 1, effective May 27.

25-7-413. Methods for reducing wood smoke in program area.

(1) Methods for reducing wood smoke in the program area may be implemented, as follows:

(a) **Voluntary financial incentives.** The lead air quality planning agency for the Denver metropolitan area shall work with other organizations to establish a program of financial incentives to encourage and defray the costs associated with conversions to Phase III wood stoves or to gas or electric devices. The program shall include incentives to use energy efficient devices.

(b) **Educational program.** The lead air quality planning agency for the Denver metropolitan area shall work with public and private organizations to promote the following: The voluntary upgrade of conventional wood-burning stoves to Phase III stoves and the conversion of existing conventional fireplaces to fireplace inserts or to gas or electric devices;

(c) **Voluntary conversions.** (I) The commission shall establish goals for voluntary conversion of wood-burning units to cleaner burning technology to be met by December 31, 1994, and by December 31, 1997. The primary objective of the goals shall be to attain and maintain standards for particulate matter established pursuant to the federal "Clean Air Act", taking into account other strategies adopted in the state implementation plan. The goals established by the commission may not exceed the following maximum levels:

(A) The conversion or nonuse of one hundred thousand conventional wood-burning fireplaces to clean technology by December 31, 1994, and one hundred fifty thousand by December 31, 1997;

(B) The conversion or nonuse of twenty thousand conventional wood stoves to Phase III wood stoves by December 31, 1994, and thirty thousand conversions by December 31, 1997.

(II) The goals established pursuant to subparagraph (I) of this paragraph (c) may be less than the maximum levels if the commission determines that such nonuse or conversions are not necessary to attain and maintain federal particulate matter standards.

(d) **Contingency plan.** (I) In the event that goals established in paragraph (c) of this subsection (1) are not met, or the commission determines that wood-burning controls are necessary to either attain or maintain the standards for particulate matter established pursuant to the 1990 amendments to the federal "Clean Air Act", taking into account other strategies, the commission shall develop and implement a contingency plan.

(II) Prior to the development of the contingency plan, the commission shall contract with an independent contractor to conduct a random survey of the program area to determine public preferences for various wood smoke reduction strategies and shall hold a public hearing before adopting any recommendations concerning wood smoke reduction strategies, which recommendations shall be submitted to the general assembly for action.

(III) Strategies surveyed for public preference and considered by the commission for inclusion in the contingency plan shall include, but need not be limited to, the following:

(A) Charging a fee for residents of dwellings who wish to burn wood in a conventional stove or fireplace and using the fee for conversion incentives, enforcement of rules against burning wood without having paid a fee, and monitoring for compliance with rules;

(B) Conversion to clean burning devices upon the sale of a dwelling unit containing a conventional fireplace or non-Phase III wood stove;

(C) Removal of the exemption for primary heat sources on no-burn days;

(D) A permit-to-burn program with a maximum number of permits determined by the commission and issued in a random but proportional manner throughout the program area.

(2) **Verifying voluntary conversions.** To measure and verify progress in regard to the provisions of subsection (1) of this section, the commission shall do the following:

(a) The commission shall develop measures for obtaining from consumers in the program area pledges not to use any device other than a Phase III wood stove, fireplace insert, or a gas or electric fireplace; and

(b) The department of revenue shall adopt a procedure for tracking conversions of non-Phase III wood stoves and fireplaces and, if applicable, the number of non-Phase III wood stoves permanently destroyed, which procedure shall include a requirement that retailers regularly submit to the commission the number of consumer purchases of Phase III wood stoves or inserts or gas or electric fireplaces.

(3) Wood smoke reduction fee - termination. (a) On and after July 1, 1992, any retailer who sells a new wood stove or insert or a gas or electric fireplace or fireplace that uses a gas or electric device in the program area shall obtain from the purchaser a signed conversion form, which form shall be provided by the department of revenue, or an entity with which the department is hereby authorized to contract, affirming the purchase of such device and indicating whether the purchase is in connection with a conversion to a cleaner burning device. In addition to obtaining the signed conversion form, the retailer shall submit to the department of revenue in accordance with paragraph (b) of this subsection (3) a fee in the amount of one dollar.

(b) On and after July 1, 1992, and in accordance with paragraph (c) of this subsection (3), the retailer shall submit to the department of revenue the conversion form along with the fee described in paragraph (a) of this subsection (3). The department of revenue shall transmit the fee to the state treasurer who shall credit the same to the wood smoke reduction fund, which fund is hereby created. The moneys in the fund shall be subject to annual appropriation by the general assembly to the department of revenue to cover the direct and indirect costs of developing a conversion form in accordance with paragraph (a) of this subsection (3), tracking conversion in accordance with paragraph (a) of this subsection (3) and paragraph (b) of subsection (2) of this section, and for the department of public health and environment to conduct a survey in connection with the implementation of a contingency plan in accordance with paragraph (d) of subsection (1) of this section; except that no moneys shall be used for conducting a survey in connection with the implementation of a contingency plan in accordance with paragraph (d) of subsection (1) of this section without specific approval by the joint budget committee. In accordance with section [24-36-114](#), C.R.S., all interest derived from the deposit and investment of this fund shall be credited to the general fund. The department of revenue, or the entity with which the department has contracted pursuant to paragraph (a) of this subsection (3), shall submit a report to the commission on the number of conversions no later than thirty days after receiving reports from retailers in accordance with paragraph (c) of this subsection (3).

(c) The retailer shall submit semi-annual reports to the department of revenue no later than on the twentieth day of the month after the close of the preceding six-month period together with the conversion forms and the remittance for all fees collected for the preceding six-month period. If no fees are submitted by the retailer, no report is necessary.

(d) Effective July 1, 1997, the wood smoke reduction fund and the wood smoke reduction fee are eliminated, and the following provisions shall apply:

(I) A retailer within the program area that sells a new wood stove or insert, or a gas or electric fireplace that uses a gas or electric device, between January 1, 1997, and June 30, 1997, shall

submit a final semi-annual report to the department of revenue no later than July 20, 1997, together with:

(A) Signed conversion forms indicating whether such purchases were made in connection with a conversion to a cleaner burning device; and

(B) A remittance of the wood smoke reduction fees collected during such period.

(II) A retailer who does not have fees to remit pursuant to sub-subparagraph (B) of subparagraph (I) of this paragraph (d) need not file a final semi-annual report.

(III) Moneys held by the state treasurer in the wood smoke reduction fund on July 1, 1997, and any moneys credited to the fund on or after such date shall be transferred to the general fund.

(4) **Commission - rule-making.** The commission may promulgate rules necessary for the effectuation of this section.

(5) Repealed.

Source: L. 92: Entire section added, p. 1320, 1, effective May 27. L. 94: (3)(b) and (5) amended, p. 2786, 507, effective July 1. L. 97: (3) amended, p. 1609, 1, effective June 4. L. 2008: (5) repealed, p. 1907, 102, effective August 5.

Cross references: For the legislative declaration contained in the 1994 act amending subsections (3)(b) and (5), see section 1 of chapter 345, Session Laws of Colorado 1994.

PART 5

ASBESTOS CONTROL

Editor's note: This part 5 was added in 1985 and was not amended prior to 1987. The substantive provisions of this part 5 were repealed and reenacted in 1987, resulting in the addition, relocation, and elimination of sections as well as subject matter. For the text of this part 5 prior to 1987, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated.

Law reviews: For article, "Recovering Asbestos Abatement Costs in Tort Actions", see 19 Colo. Law. 659 (1990).

25-7-501. Legislative declaration.

(1) The general assembly hereby declares that it is in the interest of the general public to control the exposure of the general public to friable asbestos. It is the intent of the general assembly to ensure the health, safety, and welfare of the public by regulating the practice of asbestos abatement in locations to which the general public has access for the purpose of ensuring that such abatement is performed in a manner which will minimize the risk of release of asbestos. However, it is not the intent of the general assembly to regulate occupational health practices which are regulated pursuant to federal laws or to grant any authority to the department of public health and environment to enter and regulate work areas where general public access is limited. It is the intent of the general assembly that the commission may adopt regulations to permit the enforcement of the national emission standards for hazardous air pollutants as set forth in 42 U.S.C. sec. 7412.

(2) Therefore, the general assembly determines and declares that the enactment of this part 5 is a matter of statewide concern to achieve statewide uniformity in the regulation of such asbestos abatement practices and uniformity in the qualifications for and certification of persons who perform such abatement.

Source: **L. 87:** Entire part R&RE, p. 1145, 1, effective July 1. **L. 88:** (1) amended, p. 1016, 1, effective June 11; (1) amended, p. 1440, 47, effective June 11. **L. 94:** (1) amended, p. 2786, 508, effective July 1.

Editor's note: This section is similar to former [25-7-501](#) as it existed prior to 1987.

Cross references: For the legislative declaration contained in the 1994 act amending subsection (1), see section 1 of chapter 345, Session Laws of Colorado 1994.

ANNOTATION

Law reviews. For article, "State and Federal Legislative Response to the Asbestos Threat", see 17 Colo. Law. 1973 (1988).

25-7-502. Definitions.

As used in this part 5, unless the context otherwise requires:

(1) (a) "Area of public access" means any building, facility, or property, or only that portion thereof, that any member of the general public can enter without limitation or restriction by the owner or lessee under normal business conditions; except that "area of public access" includes a single-family residential dwelling and any facility that charges the general public a fee for admission, such as any theater or arena. For purposes of this subsection (1), "general public" does not include employees of the entity that owns, leases, or operates such building, facility, or property, or such portion thereof, or any service personnel or vendors connected therewith.

(b) Repealed.

(c) Notwithstanding the provisions of paragraph (a) of this subsection (1), a single family residential dwelling shall not be considered an area of public access for purposes of this part 5 if the homeowner who resides in the single family dwelling that is the homeowner's primary residence requests, on a form provided by the division, that the single family dwelling not be considered an area of public access.

(2) "Asbestos" means asbestiform varieties of chrysotile, amosite, crocidolite, anthophyllite, tremolite, and actinolite.

(3) "Asbestos abatement" means any of the following:

(a) The wrecking or removal of structural members that contain friable asbestos-containing material;

(b) The following practices intended to prevent the escape of asbestos fibers into the atmosphere:

(I) Coating, binding, or resurfacing of walls, ceilings, pipes, or other structures for the purpose of minimizing friable asbestos-containing material from becoming airborne;

(II) Enclosing friable asbestos-containing material to make it inaccessible;

(III) Removal of friable asbestos-containing material from any pipe, duct, boiler, tank, reactor, furnace, or other structural member.

(4) "Commission" means the air quality control commission created by section [25-7-104](#).

(5) "Division" means the division of administration in the department of public health and environment.

(6) "Friable asbestos-containing material" means any material that contains asbestos and when dry can be crumbled, pulverized, or reduced to powder by hand pressure and that contains more than one percent asbestos by weight, area, or volume. The term includes nonfriable forms of asbestos after such previously nonfriable material becomes damaged to the extent that when dry it can be crumbled, pulverized, or reduced to powder by hand pressure.

(7) "Person" means any individual, any public or private corporation, partnership, association, firm, trust, or estate, the state or any department, institution, or agency thereof, any municipal corporation, county, city and county, or other political subdivision of the state, or any other legal entity which is recognized by law as the subject of rights and duties.

(7.5) "Project manager" means a person who has satisfied the experience and academic training requirements set forth by the commission.

(8) (a) "School" means any institution that provides elementary or secondary education.

(b) and (c) Repealed.

(9) "State-owned or state-leased buildings" means structures occupied by any person which are either owned by the state or utilized by the state through leases of one year's duration or longer.

(10) "Structural member" means any beam, ceiling, floor, or wall.

(11) "Trained supervisor" means an individual certified by the division to supervise asbestos abatement pursuant to section [25-7-506](#).

Source: **L. 87:** Entire part R&RE, p. 1145, 1, effective July 1. **L. 88:** (1) amended, p. 1016, 2, effective June 11. **L. 89:** (8) amended, p. 1169, 2, effective May 9. **L. 94:** (5), (8)(b), and (8)(c) amended, pp. 2787, 2702, 509, 258, effective July 1. **L. 95:** (7.5) added, p. 20, 1, effective July 1. **L. 2001:** (1) and (6) amended, p. 772, 4, effective June 1. **L. 2005:** (8)(c) repealed, p. 283, 23, effective August 8. **L. 2006:** (1)(b) and (8)(b) repealed, p. 125, 10, effective March 27.

Editor's note: This section is similar to former [25-7-502](#) as it existed prior to 1987.

Cross references: For the legislative declaration contained in the 1994 act amending subsections (5), (8)(b), and (8)(c), see section 1 of chapter 345, Session Laws of Colorado 1994.

25-7-503. Powers and duties of commission - rules - delegation of authority to division.

(1) The commission has the following powers and duties:

(a) To promulgate rules pursuant to section [24-4-103](#), C.R.S., regarding the following, as are necessary to implement the provisions of this part 5 only for areas of public access:

(I) Performance standards and practices for asbestos abatement which are not more stringent than 29 CFR 1910.1001 and 1926.58;

(II) (A) Determination of a maximum allowable asbestos level, which shall be the highest level of airborne asbestos under normal conditions that allows for protection of the general public; except that, until the commission adopts by rule a level, the maximum allowable asbestos level for the protection of the general public shall be 0.01 fibers per cubic centimeter of air, measured during normal occupancy and calculated as an eight-hour time-weighted average, in accord with 29 CFR 1910.1000 (d) (1) (i).

(B) If airborne asbestos fiber levels exceed such a level, a second test of samples may be collected during normal occupancy, analyzed by transmission electron microscopy (TEM) analysis, and calculated as an eight-hour time-weighted average in accord with 29 CFR 1910.1000 (d) (1) (i), before any order of abatement is issued.

(C) Notwithstanding the provisions of sub-subparagraph (A) of this subparagraph (II), if the asbestos level in the outside ambient air which is adjacent to an asbestos project site or area of public access exceeds 0.01 fibers per cubic centimeter of air, the existing asbestos level in such air shall be the maximum allowable asbestos level.

(III) Exemptions in emergency situations from the requirements of section [25-7-505](#) regarding the certificate to perform asbestos abatement;

(IV) Requirements for air pollution permits. Permits shall be required for asbestos abatement projects in any building, facility, or structure, or any portion thereof, having public access; except that the requirements of this subparagraph (IV) shall not apply to asbestos abatement projects performed by an individual on a single-family residential dwelling.

(V) Fees for air pollution permits, site inspections, and any necessary monitoring for compliance with this part 5;

(VI) Fees for certification as a trained supervisor;

(VII) Fees for certification which is required under federal law to engage in the inspection of schools, the preparation of asbestos management plans for schools, and the performance of asbestos abatement services for schools;

(VIII) Fees for a certificate to perform asbestos abatement;

(IX) Assessment procedures which determine the need for response actions for friable asbestos-containing materials. Such procedures shall include, but not be limited to, visual inspection and air monitoring which shows an airborne concentration of asbestos during normal occupancy conditions in excess of the maximum allowable level established by the commission in state-owned or state-leased buildings. Nothing in this subparagraph (IX) shall be construed to require that such assessments be made in state-owned or state-leased buildings; however, such procedures shall be followed in the event any such assessment is made.

(X) Requirements for asbestos management plans to be submitted and implemented by schools;

(XI) Fees to be collected from schools for review and evaluation of asbestos management plans;

(b) To promulgate rules pursuant to section [24-4-103](#), C.R.S., regarding the following, as are necessary to implement the provisions of this part 5, as required by the federal "Clean Air Act", 42 U.S.C. sec. 7412 et seq., as amended:

(I) Determination of the minimum scope of asbestos abatement to which the provisions of this part 5 shall apply, but not less than:

(A) With regard to asbestos abatement projects on a single-family residential dwelling, fifty linear feet on pipes or thirty-two square feet on other materials or the equivalent of a fifty-five-gallon drum;

(B) With regard to asbestos abatement projects not subject to sub-subparagraph (A) of this subparagraph (I), two hundred sixty linear feet on pipes or one hundred sixty square feet on other materials or the equivalent of a fifty-five-gallon drum;

(II) Requirements of notification, as consistent with the federal act, to demolish, renovate, or perform asbestos abatement in any building, structure, facility, or installation, or any portion thereof, which contains asbestos, except within such minimum scope of asbestos abatement or when otherwise exempt;

(III) (A) Procedures for the inspection and monitoring of sites where demolition, renovation, or the performance of asbestos abatement is taking place, including rules assuring that aggressive air monitoring shall be utilized only in the context of conducting final clearance of an abatement project as outlined in the federal "Asbestos Hazardous Emergency Response Act of 1986", 42 U.S.C. sec. 2641 et seq., and pursuant to the regulations found at 40 CFR 763. Specifications as listed in "measuring airborne asbestos following an abatement action", published by the environmental protection agency in 1985, shall be adopted by the commission as criteria for aggressive sampling.

(B) The division shall provide information to local governments to be used in connection with the issuance of a building permit regarding the need for an inspection for the presence of asbestos-containing materials prior to renovation or demolition of any building, structure, facility, or installation that may contain asbestos.

(IV) (A) Fees for notifications to demolish, renovate, or perform asbestos abatement and for any associated site inspections or necessary monitoring for compliance with this part 5.

(B) Fees pursuant to this subparagraph (IV) shall be paid on an annual basis for large contiguous facility complexes and on an individual notification basis for small noncontiguous facilities.

(V) Requirements to prevent any real or potential conflict of interest between the identification of asbestos-containing materials and the abatement of such materials, including requirements that project managers be used on projects of a certain size, that project managers be independent of the abatement contractor and work strictly on behalf of the building owner to the extent feasible, and that building owners may seek waivers from the project manager requirements.

(c) To approve the examination administered to applicants for certification as a trained supervisor pursuant to section [25-7-506](#);

(d) To authorize the division to:

(I) Establish procedures regarding applications, examinations, and certifications required under this part 5;

(II) Enforce compliance with the provisions of this part 5, the rules and regulations promulgated thereunder, and any order issued pursuant thereto.

(e) To promulgate rules setting minimum standards for sampling the asbestos in the air and standards for persons engaging in such sampling and to seek injunctive relief under section [25-7-511.5](#), including relief against any asbestos air sampler who acts beyond his or her level of competency. In promulgating rules setting such standards, the commission shall not use the term "air sampling professional" in such standards.

(f) (I) To adopt rules pursuant to section [24-4-103](#), C.R.S., setting out required training for persons applying for certification, recertification, or renewal of certificates as required by regulations promulgated by the federal environmental protection agency or the occupational safety and health administration.

(II) Training required pursuant to this paragraph (f) shall not be unduly duplicative or excessive.

(III) Refresher courses shall be required annually.

(2) Notwithstanding any other provisions of this section to the contrary, neither the commission nor the division shall have the authority to enforce standards more restrictive than the federal standards set forth in the "Occupational Safety and Health Act", on asbestos abatement projects which are subject to such federal standards; except that, nothing in this subsection (2) shall be construed to prevent the application and enforcement of the maximum allowable asbestos level prescribed in subparagraph (II) of paragraph (a) of subsection (1) of this section as a clearance level and a condition of reentry by the general public upon completion of the project.

Source: **L. 87:** Entire part R&RE, p. 1147, 1, effective July 1. **L. 88:** (1)(a)(II) and (1)(b)(III) amended, (1)(a)(IX) R&RE, and (2) added, p. 1017, 4, 3, effective June 11. **L. 90:** (1)(e) added, p. 1320, 2, effective May 24. **L. 92:** (1)(b)(I) amended, p. 1231, 35, effective July 1. **L. 95:** (1)(b) amended and (1)(f) added, p. 20, 2, effective July 1. **L. 2001:** (1)(a)(IV), (1)(b)(I), and (1)(b)(III) amended, p. 772, 5, effective June 1. **L. 2006:** IP(1)(a), (1)(a)(II)(A), (1)(a)(II)(B), IP(1)(b), (1)(b)(V), and (1)(e) amended, p. 123, 6, effective March 27.

Editor's note: This section is similar to former [25-7-504](#) as it existed prior to 1987.

ANNOTATION

Law reviews. For article, "State and Federal Legislative Response to the Asbestos Threat", see 17 Colo. Law. 1973 (1988).

25-7-504. Asbestos abatement project requirements - certification required for schools - certificate to perform asbestos abatement - certified trained persons.

(1) (a) Any person who inspects schools for the presence of friable asbestos, prepares asbestos management plans for schools, or conducts asbestos abatement services in schools shall obtain certification pursuant to section [25-7-507](#).

(b) Any person who inspects public or commercial buildings for the presence of asbestos, prepares management plans for public and commercial buildings, designs abatement actions in public and commercial buildings, or conducts abatement actions in public and commercial buildings shall obtain certification pursuant to section [25-7-507](#).

(2) (a) Any person who conducts asbestos abatement in any building, other than a school, shall obtain a certificate to perform asbestos abatement pursuant to section [25-7-505](#) unless such abatement project is exempt from the requirement for certification pursuant to rules and regulations promulgated by the commission.

(b) Unless otherwise exempt, asbestos abatement shall be performed under the supervision of an individual certified by the division as a trained supervisor pursuant to section [25-7-506](#), who shall be at the project site at all times that work is in progress.

(3) The requirements of this section shall apply to asbestos abatement on a single-family residential dwelling; except that the requirements of this section shall not apply to any individual who performs asbestos abatement on a single-family residential dwelling that is the individual's primary residence.

Source: L. 87: Entire part R&RE, p. 1148, 1, effective July 1. L. 92: (1) amended, p. 1231, 36, effective July 1. L. 2001: (3) amended, p. 773, 6, effective June 1.

25-7-505. Certificate to perform asbestos abatement - application - approval by division - suspension or revocation of certificate.

(1) Any person may apply to the division for a certificate to perform asbestos abatement by submitting an application in the form specified by the division and by paying a fee set by the commission. Such application shall include, but shall not be limited to:

(a) A description of the applicant's employee training program for asbestos abatement;

(b) A statement identifying all individuals employed by the applicant who are certified as trained supervisors pursuant to section [25-7-506](#).

(2) No applicant shall be certified to perform asbestos abatement unless the applicant, or at least one of the applicant's employees, is certified as a trained supervisor pursuant to section [25-7-506](#).

(3) Within fifteen days after receiving an application pursuant to this section, the division shall acknowledge its receipt and notify the applicant as to whether the application is complete. Within thirty days after receiving a completed application, the division shall issue a certificate to the applicant if the division finds that, in addition to all other requirements, the employee training program for asbestos abatement described in the application is acceptable. A certificate issued by the division pursuant to this section shall be valid for three years from the date of issuance.

(4) A certificate issued pursuant to this section may be suspended or revoked for the failure to implement the employee training program for asbestos abatement described in the application submitted pursuant to this section.

Source: L. 87: Entire part R&RE, p. 1148, 1, effective July 1.

25-7-505.5. Testing for certification under part 5.

(1) The division shall develop or purchase the examinations administered pursuant to this part 5 for certification under section 25-7-506, 25-7-506.5, and 25-7-507 and shall set the passing scores on all such examinations based on a minimum level of competency in the procedures to be followed in asbestos abatement. The division shall administer such examinations at least twice each year or more frequently if demand so warrants and shall administer such examinations at various locations in the state if demand so warrants. The purpose of the examinations required pursuant to this section is to ensure minimum competency in asbestos abatement procedures. If a person fails to achieve a passing score on any such examination, retesting of such person shall be with a different examination and after such person has completed remedial training as determined to be satisfactory to the division for minimum competency in asbestos abatement procedures. Prior to such reexamination, an applicant shall file a new application and pay a fee set by the division. Such fee shall be no greater than the amount paid for the original examination.

(2) Notwithstanding the provisions of section 25-7-506, 25-7-506.5, and 25-7-507, the division may certify an individual under this part 5 by endorsement if such individual possesses in good standing a valid license, certificate, or other registration from any other state or territory of the United States or from the District of Columbia, if the applicant presents proof satisfactory to the division that at the time of application for a Colorado certificate by endorsement the applicant possesses qualifications substantially equivalent to those of this part 5 as determined by the division.

Source: L. 90: Entire section added, p. 1320, 3, effective May 24. **L. 2006:** Entire section amended, p. 123, 4, effective March 27.

25-7-506. Certificate of trained supervisors - application - approval by division - rules - responsibilities of trained supervisors - renewal of certificate.

(1) Any individual may apply to the division to be certified as a trained supervisor by submitting an application in the form specified by the division and paying a fee set by the commission. Within fifteen days after receiving an application, the division shall notify the applicant as to whether the application is complete.

(2) Within thirty days after receiving a completed application and the results of the examination administered pursuant to paragraph (b) of this subsection (2), the division shall issue a certification valid for a period not to exceed five years as established by the commission by rule from the date of issuance upon a finding:

(a) That the applicant has, within twelve months prior to the date of the application, completed a training course on safe asbestos abatement procedures which has been approved by the division; and

(b) That the applicant has passed an examination administered by the division pursuant to section 25-7-505.5 on the procedures to be followed in asbestos abatement.

(3) An individual acting as a trained supervisor pursuant to this section shall be responsible for supervising a specific asbestos abatement project in such a manner as to assure that asbestos

abatement is performed in compliance with the provisions of this part 5 and the rules and regulations promulgated thereunder.

(4) (Deleted by amendment, L. 92, p. 1232, 37, effective July 1, 1992.)

(5) (Deleted by amendment, L. 95, p. 22, 3, effective July 1, 1995.)

Source: L. 87: Entire R&RE, p. 1149, 1, effective July 1. **L. 90:** (2)(b) amended and (5) added, p. 1321, 4, effective May 24. **L. 92:** (2) and (4) amended, p. 1232, 37, effective July 1. **L. 95:** IP(2) and (5) amended, p. 22, 3, effective July 1. **L. 2006:** IP(2) amended, p. 125, 8, effective March 27.

25-7-506.5. Certification of air monitoring specialist - rules.

(1) No person may perform air monitoring or air monitoring specialist activities for asbestos, as set forth in rules promulgated by the commission, including visual clearance inspections of an asbestos abatement project, without first obtaining a certificate pursuant to this section.

(2) Any individual may apply to the division to be certified as an air monitoring specialist by submitting an application in the form specified by the division and paying a fee set by the commission. Within fifteen days after receiving an application, the division shall notify the applicant as to whether the application is complete.

(3) Within thirty days after receiving a completed application, the division shall issue a certification valid for a period not to exceed five years as established by the commission by rule from the date of issuance upon a finding that the applicant has successfully met the experience, education, examination, and training requirements and has paid a fee, as set forth in rules promulgated by the commission.

Source: L. 2001: Entire section added, p. 773, 7, effective June 1. **L. 2006:** (3) amended, p. 123, 5, effective March 27.

25-7-507. Certification required under federal law for asbestos projects in schools and public and commercial buildings.

Pursuant to the federal "Asbestos Hazard Emergency Response Act of 1986" (Public Law 99-519) and the federal "Asbestos School Hazard Abatement Reauthorization Act of 1990" (Public Law 101-637), the division shall certify, in the manner required under the federal law, all persons engaged in the inspection of schools or public or commercial buildings, the preparation of management plans for schools or public or commercial buildings, the design of abatement actions in schools or public or commercial buildings, or the conduct of abatement actions in schools or public or commercial buildings.

Source: L. 87: Entire part R&RE, p. 1149, 1, effective July 1. **L. 92:** Entire section amended, p. 1232, 38, effective July 1.

25-7-507.5. Renewal of certificates - rules - recertification.

(1) Any certificate issued pursuant to this part 5 that has lapsed shall be deemed to have expired.

(2) (a) A certificate issued pursuant to this part 5 may be renewed prior to expiration upon payment of a renewal fee set by the commission.

(b) Renewal of a certificate may be made for a period not to exceed five years as established in rules promulgated by the commission.

(3) An individual may reinstate an expired certificate within one year after such expiration upon payment of a reinstatement fee in an amount set by the commission.

(4) An individual whose certificate has lapsed for a period longer than one year after expiration shall apply to the division for certification as required by this part 5 and shall not be recertified until the division determines that such individual has fully complied with the requirements of this part 5 and any rules promulgated pursuant thereto.

(5) (a) Any individual whose certificate has lapsed because such individual has not completed the refresher course required pursuant to section [25-7-503](#) (1) (f) may complete such refresher course within one year after the date the certificate lapses.

(b) Completion of the refresher course shall be a requirement for recertification.

(c) (I) The commission shall promulgate rules governing refresher training programs for persons in both school and nonschool asbestos abatement. Such programs shall not exceed the requirements of refresher training mandated under the federal "Asbestos Hazard Emergency Response Act of 1986" (Public Law 99-519) and any rules promulgated pursuant to such federal law.

(II) In adopting rules the commission shall ensure that refresher training requirements are related to ensuring continuing competency in asbestos abatement procedures.

(III) The division shall implement a system of testing to measure the knowledge obtained by certified persons attending the refresher training programs. Such testing shall not exceed the requirements of refresher training mandated pursuant to federal law.

Source: L. 95: Entire section added, p. 22, 4, effective July 1. **L. 2006:** (2)(b) amended, p. 125, 9, effective March 27.

25-7-508. Grounds for disciplinary action - letters of admonition - denial of certification - suspension, revocation, or refusal to renew - requirement for corrective education - administrative fines.

(1) When an application for certification pursuant to section [25-7-505](#), [25-7-506](#), [25-7-506.5](#), [25-7-507](#), or [25-7-507.5](#) is denied by the division, the applicant may contest the decision of the division by requesting a hearing before the office of administrative courts. A request for a hearing must be made within thirty calendar days after the division has issued a denial of the application in writing to the applicant. The hearing shall be held pursuant to section [25-7-119](#).

(2) (a) The division may take disciplinary action in the form of the issuance of a letter of admonition or, in conformity with the provisions of article 4 of title 24, C.R.S., the suspension, revocation, or refusal to renew certification pursuant to section [25-7-505](#), [25-7-506](#), [25-7-506.5](#), [25-7-507](#), or [25-7-507.5](#), should the division find that a person certified under this part 5:

(I) Has violated or has aided and abetted in the violation of any provision of this part 5 or any rule or regulation or order of the division or commission promulgated or issued under this part 5;

(II) (A) Has been subject to a disciplinary action relating to a certification or other form of registration or license to practice asbestos abatement under this part 5 or any related occupation in any other state, territory, or country for disciplinary reasons, which action shall be deemed to be prima facie evidence of grounds for disciplinary action, including denial of certification by the division.

(B) This subparagraph (II) shall apply only to disciplinary actions based upon acts or omissions in such other state, territory, or country substantially similar to those set out as grounds for disciplinary action pursuant to this part 5.

(C) A plea of nolo contendere or its equivalent to a charge of violating a law or regulation governing the practice of asbestos removal in another state, territory, or country that is accepted by the disciplining body of such other state, territory, or country may be considered to be the same as a finding of guilt for purposes of a hearing conducted by the division pursuant to this subsection (2).

(III) Has been convicted of a felony or has had accepted by a court a plea of guilty or nolo contendere to a felony if the felony is related to the ability to engage in activities regulated pursuant to this part 5. A certified copy of the judgment of a court of competent jurisdiction of such conviction or plea shall be conclusive evidence of such conviction or plea. In considering the disciplinary action, the division shall be governed by the provisions of section [24-5-101](#), C.R.S.

(IV) Has failed to report to the division a disciplinary action specified in subparagraph (II) of this paragraph (a) or a felony conviction for an act specified in subparagraph (III) of this paragraph (a);

(V) Has failed to meet any permit and notification requirement or failed to correct any violations cited by the division during any inspection within a reasonable period of time;

(VI) Has used misrepresentation or fraud in obtaining or attempting to obtain a certificate under this part 5;

(VII) Has failed to adequately supervise an asbestos abatement project as a certified trained supervisor;

(VIII) Has committed any act or omission which does not meet generally accepted standards of the practice of asbestos abatement;

(IX) Has engaged in any false or misleading advertising.

(b) When a complaint or an investigation discloses an instance of misconduct which, in the opinion of the division, does not warrant suspension or revocation by the division but which should not be dismissed as being without merit, a letter of admonition may be sent by certified mail to the certified person against whom a complaint was made and a copy thereof to the person making the complaint, but, when a letter of admonition is sent by certified mail by the division to a certified person complained against, such certified person shall be advised that such person has the right to request in writing, within twenty days after proven receipt of the letter, that formal disciplinary proceedings be initiated against such person to adjudicate the propriety of the

conduct upon which the letter of admonition is based. If such request is timely made, the letter of admonition shall be deemed vacated, and the matter shall be processed by means of formal disciplinary proceedings.

(3) A person aggrieved by an action taken by the division pursuant to subsection (2) of this section may contest the action by requesting a hearing before the office of administrative courts within thirty days after the applicant is notified in writing of the division's action. The hearing shall be held pursuant to section 25-7-119. Any person aggrieved by an action taken by the office of administrative courts pursuant to subsection (2) of this section may appeal the action to the court of appeals in accordance with section 24-4-106 (11), C.R.S.

(4) In addition to or in lieu of the forms of disciplinary action authorized in subsection (2) of this section, the division, in its discretion, may require corrective education in the area of asbestos abatement as a disciplinary action against a certified person when the situation so warrants, such corrective education to be directed toward weak or problematic areas of a certified person's practice.

(5) Any certified person who violates any provision of this section, in addition to any other enforcement action available under this article, may be disciplined upon a finding of misconduct by the division as follows:

(a) In any first administrative proceeding against a certified person, a fine of not less than one hundred dollars nor more than one thousand dollars;

(b) In a second or subsequent administrative proceeding against a certified person for transactions occurring after a final agency action determining that a violation of this part 5 has occurred, a fine of not less than one thousand dollars nor more than ten thousand dollars.

(6) If a certification is revoked by the division, the person against whom such action was taken shall not apply for recertification for a period of one year after such revocation and shall be required to demonstrate compliance with any disciplinary action imposed by the division and to demonstrate competency in asbestos abatement procedures prior to receiving a new certificate.

Source: L. 87: Entire part R&RE, p. 1149, 1, effective July 1. L. 90: (2) R&RE, (3) amended, and (4) to (6) added, pp. 1321, 1323, 5, 6, effective May 24. L. 92: (1), (3), and (5) amended, p. 1232, 39, effective July 1. L. 95: (2)(a)(II), (2)(b), and (6) amended, p. 23, 5, effective July 1. L. 2001: IP(2)(a) amended, p. 774, 8, effective June 1. L. 2005: (1) and (3) amended, p. 858, 23, effective June 1. L. 2006: (1) and IP(2)(a) amended, p. 124, 7, effective March 27.

25-7-509. Prohibition against local certification regarding asbestos abatement.

Inasmuch as uniformity in the regulation of asbestos abatement practices and uniformity in the qualifications and certification of persons performing asbestos abatement is a matter of statewide concern, no certification or licensing of asbestos abatement projects nor any examination or certification of persons certified under this part 5 shall be required by any city, town, county, or city and county; however, any such local governmental authority may impose reasonable registration requirements on any person performing asbestos abatement as a condition of performing such activity within the jurisdiction of such authority. Registration fees charged by any such local governmental authority to any such person shall not exceed those costs associated with such registration requirements and functions.

Source: L. 87: Entire part R&RE, p. 1150, 1, effective July 1.

25-7-509.5. Building permits.

(1) Except as otherwise provided in subsection (2) of this section, a local government entity with authority to issue building permits shall require a property owner applying for either a permit to renovate property or a permit to demolish property to disclose, on the permit application form, whether the property owner knows if the property has been inspected for asbestos.

(2) (a) A local government entity with authority to issue building permits need not update its application forms to include the disclosure required by subsection (1) of this section until the entity otherwise creates and disseminates updated application forms pursuant to its standard practice. The local government entity need not require a property owner applying for a permit to renovate or demolish property to make the disclosure required by subsection (1) of this section until it has updated its application forms.

(b) When updating the application form for a permit to renovate property or a permit to demolish property, the local government entity shall include on the application form substantially the following information:

I DO NOT KNOW IF AN ASBESTOS INSPECTION HAS BEEN CONDUCTED ON THE BUILDING MATERIALS THAT WILL BE DISTURBED BY THIS PROJECT.

AN ASBESTOS INSPECTION HAS BEEN CONDUCTED ON THE BUILDING MATERIALS THAT WILL BE DISTURBED BY THIS PROJECT ON OR ABOUT:

(DATE)

AN ASBESTOS INSPECTION HAS NOT BEEN CONDUCTED ON THE BUILDING MATERIALS THAT WILL BE DISTURBED BY THIS PROJECT.

Source: L. 2013: Entire section added, (SB 13-152), ch. 85, p. 272, 3, effective March 29.

25-7-510. Fees.

(1) (a) The fees required pursuant to this part 5 shall be established pursuant to rules and regulations promulgated by the commission.

(b) The commission shall adjust the fees so that the revenue generated from such fees is sufficient to cover the division's direct and indirect costs in implementing the provisions of this part 5.

(2) All fees collected by the division pursuant to this part 5 shall be transmitted to the state treasurer, who shall credit the same to the stationary sources control fund established pursuant to section 25-7-114.7 (2) (b). The general assembly shall appropriate to the department of public health and environment, at least annually, from the fund, an amount sufficient to implement the provisions of this part 5.

Source: L. 87: Entire part R&RE, p. 1150, 1, effective July 1. **L. 92:** (2) amended, p. 1233, 40, effective July 1. **L. 94:** (2) amended, p. 2787, 510, effective July 1.

Cross references: For the legislative declaration contained in the 1994 act amending subsection (2), see section 1 of chapter 345, Session Laws of Colorado 1994.

25-7-511. Enforcement.

(1) Whenever the division has reason to believe that any person has violated any of the provisions of this part 5 or the rules and regulations promulgated thereunder, the division may issue a notice of violation and cease-and-desist order. The notice of violation shall set forth the provision, rule, or regulation alleged to have been violated and the facts constituting such violation. The cease-and-desist order shall set forth the measures which the person shall take to eliminate the violation and the time within which these measures shall be performed. The order may require that the person stop work at the asbestos abatement project until the violation has been eliminated or may require a school to submit and implement an asbestos management plan by a date specified by the division.

(2) If the recipient of a cease-and-desist order issued pursuant to subsection (1) of this section fails to comply with the terms of the order within the time specified, the division may file an action in the district court of the county where the violation is alleged to have occurred requesting that the court order the person to comply with the cease-and-desist order. When the division alleges that the violation poses a significant danger to the health of any person, the court shall grant such action priority.

(3) Unless the division has filed an action in the district court pursuant to subsection (2) of this section, a recipient of a cease-and-desist order may request a hearing before the commission to contest the cease-and-desist order. Such request shall be filed within thirty days after the cease-and-desist order has been issued. A hearing on the cease-and-desist order shall be held pursuant to section [25-7-119](#).

(4) Upon a finding by the division that a person is in violation of any of the provisions of this part 5 or the rules and regulations promulgated thereunder, the division may assess a penalty of up to twenty-five thousand dollars per day of violation or such lesser amount as may be required by applicable federal law or regulation. In determining the amount of the penalty to be assessed, the division shall consider the seriousness of the danger to the public's health caused by the violation, whether or not the violation was willful, the duration of the violation, and the record of the person committing such violation.

(5) A person subject to a penalty assessed pursuant to subsection (4) of this section may appeal the penalty to the commission by requesting a hearing before the commission. Such request shall be filed within thirty days after the penalty assessment is issued. A hearing pursuant to this subsection (5) shall be conducted pursuant to section [25-7-119](#).

(6) All penalties collected pursuant to this section shall be transmitted to the state treasurer, who shall credit the same to the general fund.

Source: L. 87: Entire part R&RE, p. 1150, 1, effective July 1.

25-7-511.5. Injunctive proceedings.

(1) The division may, in the name of the people of the state of Colorado, through the attorney general of the state of Colorado, apply for an injunction in any court of competent jurisdiction:

(a) To enjoin any person from committing any act prohibited by the provisions of this part 5;

(b) To enjoin a certified person from practicing the profession for which he is certified under this part 5.

(2) If it is established that the defendant has been or is committing any act prohibited by this part 5, the court shall enter a decree perpetually enjoining said defendant from further committing said act or from practicing asbestos abatement.

(3) Such injunctive proceedings shall be in addition to and not in lieu of all penalties and other remedies provided in this part 5.

(4) When seeking an injunction under this section, the division shall not be required to allege or prove either that an adequate remedy at law does not exist or that substantial or irreparable damage would result from a continued violation.

Source: L. 90: Entire section added, p. 1323, 7, effective May 24.

25-7-511.6. Refresher training - authorization.

The commission shall promulgate rules and regulations governing refresher training programs for persons in both school and nonschool asbestos abatement. Such programs shall not exceed the requirements of refresher training mandated under the federal "Asbestos Hazard Emergency Response Act of 1986" (Public Law 99-519), as amended, and any rules and regulations promulgated under such federal law. In adopting such rules and regulations, the commission shall ensure that refresher training requirements are related to ensuring continuing competency in asbestos abatement procedures. The division shall implement a system of testing to measure the knowledge obtained by certified persons attending such programs.

Source: L. 90: Entire section added, p. 1323, 7, effective May 24.

25-7-512. Repeal of part.

This part 5 is repealed, effective September 1, 2022. Before the repeal, the department of regulatory agencies shall review the functions of the division under this part 5 as provided for in section [24-34-104](#), C.R.S.

Source: L. 87: Entire part R&RE, p. 1151, 1, effective July 1. **L. 88:** Entire section amended, p. 931, 16, effective April 28. **L. 90:** Entire section amended, p. 1324, 8, effective May 24. **L. 91:** Entire section amended, p. 688, 57, effective April 20. **L. 94:** Entire section amended, p. 1457, 9, effective May 25. **L. 95:** Entire section amended, p. 24, 6, effective July 1. **L. 2001:** Entire section amended, p. 771, 3, effective June 1. **L. 2006:** Entire section amended, p. 122, 1, effective March 27. **L. 2013:** Entire section amended, (SB 13-152), ch. 85, p. 271, 2, effective March 29.

PART 6 DIESEL INSPECTION PROGRAM

25-7-601 to 25-7-610. (Repealed)

Editor's note: (1) This part 6 was added in 1988, effective January 1, 1990. For amendments to this part 6 prior to its repeal in 1995, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. The provisions of this part 6 were relocated to part 4 of article 4 of title 42. For the location of specific provisions, see the editor's notes following each section in said part 4 and the comparative tables located in the back of the index.

(2) Section 25-7-610 provided for the repeal of this part 6, effective January 1, 1995. (See L. 94, p. 2541.)

Cross references: For current provisions concerning the diesel emissions program, see part 4 of article 4 of title 42.

PART 7

TRAVEL REDUCTION TASK FORCE

25-7-701 to 25-7-706. (Repealed)

Editor's note: (1) This part 7 was added in 1990 and was not amended prior to its repeal in 1991. For the text of this part 7 prior to 1991, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

(2) Section 25-7-706 provided for the repeal of this part 7, effective July 1, 1991. (See L. 90, p. 1328.)

PART 8

TRAVEL REDUCTION PROGRAM

25-7-801 to 25-7-806. (Repealed)

Editor's note: (1) This part 8 was added in 1991. For amendments to this part 8 prior to its repeal in 1994, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

(2) Section 25-7-806 provided for the repeal of this part 8, effective July 1, 1994. (See L. 91, p. 981.)

PART 9

CLEAN AIR TRANSIT OPTIONS

25-7-901. Legislative declaration.

The general assembly hereby declares that the state's effort to mitigate traffic congestion and promote clean air will be served by providing clean air transit options to state employees.

Source: L. 96: Entire part added, p. 853, 1, effective May 23.

25-7-902. Definitions.

(1) "State agency" means any department, board, bureau, commission, institution, or other agency of the state, including institutions of higher education.

(2) "State employees" means the employees of any state agency.

Source: L. 96: Entire part added, p. 853, 1, effective May 23.

25-7-903. Clean air transit options for state employees.

Any state agency may provide clean air transit options to state employees of that agency, including, but not limited to, the use of available mass transit. The financing of any transit option

offered by a state agency to state employees shall be from existing appropriations to that state agency. A transit option shall be considered a perquisite that is subject to the state controller's fiscal rules controlling perquisites under section [24-30-202](#) (22), C.R.S.

Source: L. 96: Entire part added, p. 853, 1, effective May 23.

PART 10

AIR QUALITY RELATED VALUES - CLASS I FEDERAL AREAS

25-7-1001. Legislative declaration.

In order to establish a fair, practical, and cost-effective process for evaluating and, where appropriate, responding to assertions that air quality related values within Colorado's class I federal areas are being significantly and adversely affected by air pollution, such as air pollution that is causing biological harm, the general assembly hereby institutes the procedures set forth in this part 10.

Source: L. 96: Entire part added, p. 1443, 1, effective June 1.

25-7-1002. Air quality related values program.

(1) In addition to maintaining a program that complies with the requirements of the federal act for prevention and remediation of significant deterioration of visibility in class I federal areas, the commission, in consultation with the general assembly, the governor, and affected federal, state, and local governmental entities, shall maintain a state-retained authority program in conformance with section [25-7-105.1](#) for nonvisibility air quality related values, referred to in this part 10 as the "program".

(2) The commission shall develop a program under which, except for grant funds secured from other sources, the federal government undertakes the responsibility for the funding of air quality related value baseline data collection and the verification studies needed to substantiate an assertion of significant impairment, and the commission is encouraged to conduct the activities specified in this part 10 in coordination with interested state and local governmental entities and affected citizens and businesses.

Source: L. 96: Entire part added, p. 1443, 1, effective June 1.

25-7-1003. Definitions.

As used in this part 10:

(1) "Air quality related value (AQRV)" means a feature or property of a class I federal area other than visibility that the state of Colorado finds may be affected by air pollution. General categories of air quality related values include odor, flora, fauna, soil, water, geologic features, and cultural resources.

(2) "Air quality related value baseline data" means research data based on site-specific measurements and samplings of air quality related values within a class I federal area needed to substantiate a determination of whether or not a particular observation is within the range of naturally occurring changes or fluctuations.

(3) "Best available retrofit technology" means a control strategy for addressing emissions of a stationary source developed on a case-by-case basis after taking into consideration the costs of compliance, the energy and nonair quality environmental impacts of compliance, any existing pollution control technology in use at the source, the remaining useful life of the source, and the degree of improvement in the air quality related value that may reasonably be anticipated to result from the use of such technology.

(4) "Peer review" means a review of scientific or technical information by a balanced objective panel of experienced scientists qualified to review the subject matter involved in verifying the existence of or attributing the cause of an AQRV impairment.

(5) "Reasonably available control measure" means a control strategy for addressing emissions of a nonstationary source developed on a case-by-case basis after taking into consideration the options available to achieve emission reductions that a particular source or source category is capable of meeting as appropriate to an air quality related value if such steps may be feasibly and practicably taken considering technical and economic constraints.

(6) "Significant impairment of an air quality related value" means a measurable change in an air quality related value that is outside the probability of natural variability, that is caused by human activities, and that is causing a significant adverse effect to flora, fauna, soil, geologic features, cultural resources, or a beneficial use of water recognized under Colorado law.

Source: L. 96: Entire part added, p. 1444, 1, effective June 1.

25-7-1004. Administration of program by division.

(1) In administering the program, the division shall:

(a) Conduct or oversee program activities and scientific studies and determine an appropriate scope, sequence, and timetable for such studies and activities;

(b) Subject assertions by a federal land manager of air quality related value impairment in a class I federal area and studies concerning source attribution and source apportionment to peer review;

(c) Utilize the study design and data collection and analytical techniques set forth in section [25-7-211](#) that are relevant and appropriate to the activity or study;

(d) Assure that studies proceed as expeditiously as sound science will allow in order to minimize any delay in the process.

(2) As necessary or appropriate, the division may:

(a) Enter into memoranda of understanding for participation in the studies and activities required by this part 10;

(b) Create cooperative public-private partnerships with various entities; and

(c) Perform any other appropriate activity to carry out the intent of the program.

(3) The division shall not be required to pay the cost of any studies that are discretionary as set forth in this part 10 other than as set forth in this section. If the division determines that an air quality related value of a class I federal area has the potential to be significantly threatened by air

pollution, or is being impacted by air pollution, then the division shall apply for grants or act as a catalyst to secure financial support from available funding sources in federal, state, or local governments and private entities, to identify the threat by funding the necessary air quality related value baseline data collection, or to assist in remedying the threat by funding necessary attribution or apportionment studies. The division is also authorized to act as a catalyst to secure financial support from other sources for such studies. The results of such studies and data collection shall be made available to the appropriate federal land manager and interested members of the public to assist in the management of these scenic resources and to cooperate in any needed air quality related values assessments.

Source: L. 96: Entire part added, p. 1445, 1, effective June 1.

25-7-1005. Verification of federal land manager's assertion of air quality related value impairment.

(1) The federal land manager of a class I federal area may initiate the procedures of this part 10 by submitting to the governor and division an assertion of significant impairment of an air quality related value, referred to in this part 10 as an "assertion". To be adequate to support a verification of impairment, the assertion shall be supported by sufficient air quality related value baseline data and site-specific evidence of impairment. The assertion may be supported in part by information that concerns other areas with a similar environment to the class I federal area asserted to be impaired, provided such information is relevant to the class I federal area asserted to be impaired and significant site-specific data is also available.

(2) Upon receipt of an assertion, the division shall initiate the following actions concurrently:

(a) Inform the commission at its next regularly scheduled monthly meeting of the receipt of an assertion, at which time the commission shall schedule the matter for a formal report from the division at the regular commission meeting that is scheduled to occur six months subsequent. All such informational briefings and formal reports on the subject shall be noticed on the published agenda of the commission.

(b) Within sixty days of receipt of the assertion, the division shall convene a peer review panel to review the assertion, its supporting documentation, including the adequacy of the baseline data and the adequacy of the site-specific and other evidence of impairment, and any other relevant information submitted to the division by the public. The requirement for peer review as specified in this paragraph (b) is waived with respect to any peer reviewer who has not submitted peer review comments within sixty days of the date on which the division certifies that the assertion, documentation, and other information has been transmitted to the individual peer reviewers.

(c) Convene a consultation process that is open to the public in order to apprise the public and potentially affected sources and source categories of all stages of the program and to solicit the scientific, technical, economic, and managerial views and assistance of the public and the potentially affected sources and source categories; and

(d) Initiate a review by division staff of the assertion and the supporting documentation submitted by the federal land manager to assess whether the federal land manager has demonstrated a significant impairment of an air quality related value in a class I federal area within Colorado.

(3) At the commission meeting required by paragraph (a) of subsection (2) of this section, the division shall report to the commission. The division's report shall include, but is not limited to, the conclusions of the peer review panel concerning verification of the assertion and the division's determination of whether the federal land manager has demonstrated a significant impairment of an air quality related value in a class I area within Colorado. If the division determines that the assertion has not been verified, it shall so notify the commission and the federal land manager of its findings and the fact that the proceedings authorized under this part 10 have been completed. If the division determines that the assertion has been verified, it shall proceed in accordance with the provisions of section [25-7-1006](#).

Source: L. 96: Entire part added, p. 1445, 1, effective June 1.

25-7-1006. Source attribution and control strategy development.

(1) If the division determines that the assertion has been verified, it shall:

(a) Compile a comprehensive inventory of the sources of the pollutants that are suspected to be causing the impairment;

(b) Subject the development, conduct, and results of the attribution and apportionment studies to appropriate peer review; and

(c) Perform attribution and apportionment studies to the extent feasible in order to develop for the division and the commission the identity and relative contribution of the significant contributors to air quality related value impairment, including, but not limited to, stationary sources, natural sources, wood smoke, agriculture, mining, roads, mobile source categories, and other area sources. The general assembly recognizes that the ability to attribute the cause of air pollution effects and apportion the air pollution effects among sources and source categories identified by attribution studies is an area of evolving science.

(2) (a) The funding of source attribution and apportionment studies shall be derived as provided in this subsection (2). Contributions to support the funding of such studies shall be requested from sources and source categories identified by the division as potentially contributing to the impairment.

(b) If a potential contribution to impairment is identified from federal lands or state lands, the division shall request a funding contribution for such studies from the appropriate federal or state land manager.

(c) If a potential contribution to impairment is identified from stationary sources or source categories, the division shall request a funding contribution for such studies from such sources or source categories.

(d) If a potential contribution to impairment is identified from mobile sources, the division shall seek an appropriation by the general assembly of excess funds in the AIR account in the highway users tax fund for funding contributions to such studies.

(e) The division shall annually report to the legislative council on the adequacy of funding derived pursuant to this subsection (2). If funding derived pursuant to this subsection (2) is inadequate, the legislative council may recommend that the general assembly appropriate funds from available sources for purposes of this section.

(3) Following its review and analysis of the reasonable attribution and source apportionment studies and the reports thereon from the members of the peer review panel, the division shall identify those sources and source categories within the state and region significantly contributing to air quality related value impairment.

(4) The division shall identify the sources and source categories significantly contributing to air quality related value impairment that are located outside the state and report this list to the commission, governor, and general assembly for their consideration in identifying options for remedying such impacts.

(5) The division shall issue an order to the sources and source categories significantly contributing to air quality related value impairment located within the state that have not made a voluntary enforceable commitment under section [25-7-1008](#).

(6) (a) An order issued pursuant to subsection (5) of this section shall require:

(I) Such sources and source categories to submit a report within a reasonable period of time;

(II) A stationary source to identify the best available retrofit technology; and

(III) Other sources and source categories to identify reasonably available control measures.

(b) After considering the responses to an order issued pursuant to subsection (5) of this section, the division shall issue a public report to the commission concerning its recommendations on air quality related value impairment, source attribution, source apportionment, and control strategy options.

Source: L. 96: Entire part added, p. 1447, 1, effective June 1.

25-7-1007. Commission to consider control strategies in rule-making proceeding.

(1) Upon receipt of a report under section [25-7-1006](#) (6) (b) from the division, and after the division has made the report available to all significant source or source categories identified pursuant to section [25-7-1006](#), the commission shall give notice that it is to conduct a rule-making hearing concerning the implementation of control strategies recommended in the report.

(2) In addition to other applicable rule-making provisions, the rule-making hearing shall be conducted:

(a) In reasonable proximity to the affected class I federal area;

(b) To allow sufficient time for comment and testimony by all interested persons; and

(c) To allow reasonable discovery pursuant to section [24-4-103](#) (13) and (14), C.R.S.

(3) (a) The commission shall order by rule implementation within a reasonable time of a practical and cost-effective control strategy or strategies that will provide reasonable progress toward remedying the impairment, if the commission finds that:

(I) The evidence in the record shows the existence of a significant impairment of an air quality related value in a class I federal area;

(II) An identifiable source or source category is responsible for significantly causing or contributing to the impairment;

(III) The best available retrofit technology exists for any such stationary source;

(IV) Reasonably available control measures exist for any such other sources or source categories;

(V) Implementation of the control strategies would make significant improvement in the impairment;

(VI) Taking into account that the ability to attribute the cause of air pollution effects and to apportion the air pollution effects among sources and source categories identified by attribution studies is an area of evolving science, a correlation of the extent of improvement in air quality related value impairment can reasonably be expected to result from imposition of a control strategy or strategies for each significant source or source category identified by the division.

(b) Within fourteen days after having received the division's report under section 25-7-1006 (6) (b), a source or source category may petition the commission, as part of its rule-making hearing conducted pursuant to this subsection (3), to make a determination that the benefits of phasing, segmenting, or excusing the control strategy or strategies outweigh the benefits of imposing the control strategy or strategies. In making such determination, the commission shall consider all economic and related costs associated with the implementation of the control strategy or strategies involving the source or source category. The burden of proof shall be on the petitioner.

Source: L. 96: Entire part added, p. 1448, 1, effective June 1.

25-7-1008. Voluntary agreements.

(1) The division may convene, at any appropriate time, an informal voluntary negotiation process, with appropriate public participation, to seek voluntary enforceable commitments from sources and source categories to achieve emissions reductions sufficient to make reasonable further progress in reducing any portion of the impairment.

(2) A voluntary enforceable commitment becomes enforceable through a commission rule, local ordinance or resolution, judicially enforceable consent decree, or division permit condition, as appropriate to the circumstances.

(3) If subsequent to January 15, 1996, a source or source category agrees to an enforceable commitment to adopt a control strategy that the division determines is as effective or is more effective than best available retrofit technology for stationary sources or reasonably available control measures for nonstationary sources, the division shall exempt that source or source category from the imposition of further controls pursuant to this part 10 for a period of ten years from the date established for achieving the emission reductions as specified in the voluntary enforceable agreement.

(4) If subsequent to January 15, 1996, and prior to January 15, 1998, a source or source category agrees to an enforceable commitment contained in a judicially enforceable consent decree to adopt a control strategy that the division determines provides both for reasonable progress toward the national visibility goal under 40 CFR Part 51, Subpart P and 5 CCR 1001-4 and for reasonable progress in reducing any present or future impairment of an air quality related value, the division shall exempt that source or source category from the imposition of further controls pursuant to this part 10 for a period of ten years from the date established for achieving

the emission reductions as specified in the judicially enforceable consent decree. The provisions of section [25-7-133](#) shall not apply to that portion of an amendment to the visibility component of the state implementation plan that implements and enforces the control strategy covered by this subsection (4).

(5) If a source or source category agrees to an enforceable commitment to adopt a control strategy that the division determines is not as effective as best available retrofit technology for stationary sources or reasonably available control measures for nonstationary sources but that the division determines will assist in making reasonable further progress in reducing impairment of an air quality related value, the commission may, after public hearing, exempt that source or source category from the imposition of further controls pursuant to this part 10 with respect to those pollutants that the source or source category has agreed to control for a period of up to ten years from the date established for achieving the emission reductions as specified in the voluntary enforceable agreement.

(6) A source that, prior to June 1, 1996, has received a permit under the federal prevention of significant deterioration program, 42 U.S.C. secs. 7470 to 7479 or section [25-7-201](#) to [25-7-210](#), and installed pollution control measures comparable to the best available control technology pursuant to that program shall not be required to install additional control measures pursuant to this part 10 for a period of ten years from June 1, 1996, but may be required to operate pollution control equipment to its maximum efficiency. This section shall not apply to any source that is not subject to compliance with the requirements of 42 U.S.C. sec. 7651 (f), which establishes schedules and emission limitations for the control of nitrogen oxide emissions from certain stationary sources. Nothing in this subsection (6) shall be construed to modify the terms of any permit applicable to such source or excuse compliance with respect to any other requirement under this article or the federal act. Except for the exemption for a period of ten years provided in this subsection (6), nothing in this subsection (6) shall excuse such sources from responding to reasonable requests by the division for information required to complete inventories and attribution and apportionment studies.

Source: L. 96: Entire part added, p. 1449, 1, effective June 1.

PART 11

LEAD-BASED PAINT ABATEMENT

25-7-1101. Legislative declaration.

(1) The general assembly hereby declares that:

(a) Exposure of children to lead represents a significant environmental health problem that is preventable;

(b) According to the federal "Residential Lead-based Paint Hazard Reduction Act of 1992", 15 U.S.C. secs. 2682 and 2684, et seq., as amended, home buyers and renters must be properly informed of the risks of lead exposure to children, especially children under seven years of age;

(c) Trained and qualified individuals are needed in order to advise consumers about lead hazards in general and about specific measures that may be needed to control such hazards; and

(d) The state seeks to adopt the concept of "lead-safe" housing units and child-occupied facilities, rather than "lead-free" housing and facilities. The goal of the state should not be the removal of all lead-based paint, but the creation of housing and facilities where no significant lead-based paint hazard is present. This goal includes the removal, enclosure, or encapsulation of lead-based paint to remove lead hazards from target housing and child-occupied facilities.

(2) The general assembly declares that the enforcement of the lead-based paint abatement standards may be delegated to local health and building departments in Colorado.

(3) Therefore, the general assembly determines and declares that the enactment of this part 11 is a matter of statewide concern to achieve uniformity in the regulation of lead abatement practices and uniformity in the qualifications for and certification of persons who perform such abatement.

Source: L. 97: Entire part added, p. 1086, 2, effective July 1.

25-7-1102. Definitions.

As used in this part 11, unless the context otherwise requires:

(1) "Abatement" means any measure or set of measures that will contain or permanently eliminate lead-based paint hazards, including:

(a) The removal of lead-based paint and lead-contaminated dust;

(b) The permanent containment of lead-based paint;

(c) The encapsulation of lead-based paint;

(d) The replacement or enclosure of lead-painted surfaces or fixtures;

(e) The removal or covering of lead-contaminated soil; and

(f) All preparation, cleanup, disposal, monitoring, and clearance testing activities associated with the measures described in this subsection (1).

(2) (a) "Child-occupied facility" means a building or portion of a building that:

(I) Was constructed prior to 1978;

(II) Is visited regularly by the same child who is under seven years of age;

(III) Is visited by such child on two or more days within any week, consisting of the period from Sunday through the following Saturday, with each such visit totaling six or more hours; and

(IV) Is visited by such child a total of at least sixty hours in one year.

(b) "Child-occupied facility" includes, but is not limited to, any day-care center, preschool, or kindergarten classroom constructed prior to 1978.

(3) "Commission" means the air quality control commission created by section [25-7-104](#).

(4) "Division" means the air pollution control division in the department of public health and environment.

(5) "Lead-based paint" means any paint containing more than six one-hundredths of one per cent by wet weight of lead metal, more than five-tenths of one percent by dry weight of lead metal, or more than one milligram per square centimeter of lead metal.

(6) "Lead-based paint hazard" means any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, or lead-based paint.

(7) "Target housing" means housing constructed prior to 1978 other than any zero-bedroom dwelling or any housing for the elderly or a person with a disability; except that "target housing" includes housing for the elderly or a person with a disability if a child under seven years of age resides or is expected to reside in the housing.

Source: L. 97: Entire part added, p. 1086, 2, effective July 1.

25-7-1103. Powers and duties of air quality control commission - rules.

(1) The commission shall promulgate rules pursuant to section [24-4-103](#), C.R.S., as necessary to implement this part 11 under the requirements of the federal "Residential Lead-Based Paint Hazard Reduction Act of 1992", 15 U.S.C. secs. 2682, 2684, and 2686, as amended, including the following:

(a) Procedures for a training and certification program for persons and companies involved in inspection, risk assessment, planning, project design, supervision, or conduct of the abatement of surfaces containing lead-based paint, as such actions are defined in the federal "Residential Lead-based Paint Hazard Reduction Act of 1992", in target housing or child-occupied facilities;

(b) Performance standards and practices for lead abatement;

(c) Procedures for the approval of persons or companies who provide training or accreditation for workers, supervisors, inspectors, risk assessors, or project designers performing lead-based paint activities in target housing or child-occupied facilities;

(d) Procedures for notification to appropriate persons regarding lead-based paint projects in target housing or child-occupied facilities; and

(e) Establishment of fees for certification of persons under paragraph (a) of this subsection (1), for any necessary monitoring of such persons to ensure compliance with this part 11, and for approval of persons or companies involved in the training or accreditation under paragraph (c) of this subsection (1).

(f) (I) Requirements for each person who performs for compensation a renovation of target housing to provide a lead hazard information pamphlet to the owner and occupant of such housing prior to commencing the renovation.

(II) If the federal funding necessary to comply with this paragraph (f) is revoked, the division shall not be required to comply with this paragraph (f) until such funding is restored.

(2) (a) The requirements for the training and certification program established by the commission under paragraph (a) of subsection (1) of this section shall not be more stringent than:

(I) The training and certification requirements established by the federal "Residential Lead-based Paint Hazard Reduction Act of 1992" or federal rules promulgated pursuant to such act; or

(II) The training and certification requirements of any program that has been established under the federal "Residential Lead-based Paint Hazard Reduction Act of 1992" and that has been approved by the federal environmental protection agency.

(b) The commission shall consider prior experience in abatement of lead-based paint hazards when establishing training and certification requirements.

(3) The provisions of this part 11 apply only to lead-based paint hazards.

Source: L. 97: Entire part added, p. 1088, 2, effective July 1. **L. 2006:** IP(1) amended and (1)(f) added, p. 131, 1, effective August 7.

25-7-1104. Duties of air pollution control division - certification of trained individuals.

(1) Pursuant to the federal "Residential Lead-based Paint Hazard Reduction Act of 1992", 15 U.S.C. secs. 2682 and 2684, et seq., as amended, the division shall implement, coordinate, and oversee the implementation of the rules promulgated by the commission, including, but not limited to:

(a) Certifying any person or company involved in inspection, risk assessment, planning, project design, supervision, or conduct of the abatement of surfaces containing lead-based paint, as such actions are defined in the federal "Residential Lead-based Paint Hazard Reduction Act of 1992", in target housing or child-occupied facilities; and

(b) Taking actions necessary to enforce such rules of the commission.

(2) Other than training and certification requirements, which are deemed to be matters of statewide concern, the division may delegate the implementation or enforcement of standards under this part 11 to local health or building departments, as appropriate, if requested by such a local department. The air quality control commission shall establish standards regarding such delegations to local health and building departments.

Source: L. 97: Entire part added, p. 1089, 2, effective July 1.

25-7-1105. Fees.

(1) (a) The commission shall promulgate rules to establish the fees required under this part 11.

(b) The commission shall adjust the fees so that the revenue generated from such fees is sufficient to cover the direct and indirect costs to implement the lead hazard reduction program under this part 11 and part 11 of article 5 of this title.

(2) All fees collected by the division or its designee pursuant to this part 11 shall be transmitted to the state treasurer, who shall credit the same to the lead hazard reduction cash fund established pursuant to section [25-5-1106](#). The general assembly shall appropriate from such fund to the department of public health and environment sufficient moneys to implement the provisions of this part 11 and part 11 of article 5 of this title.

Source: L. 97: Entire part added, p. 1089, 2, effective July 1.

25-7-1106. Enforcement.

Whenever the division or its designee has reason to believe that any person has violated any of the provisions of this part 11 or the rules promulgated thereunder, the division or its designee may commence an enforcement action pursuant to section [25-7-115](#).

Source: L. 97: Entire part added, p. 1089, 2, effective July 1.

25-7-1107. Applicability of article - child-occupied facilities and target housing.

Nothing in this article shall be interpreted to affect any facility or location other than a child-occupied facility or target housing.

Source: L. 97: Entire part added, p. 1089, 2, effective July 1.

PART 12

VOLUNTARY EMISSION LIMITATIONS

25-7-1201. Legislative declaration.

The general assembly hereby finds, determines, and declares that voluntary emission limitations are an effective and efficient way to reduce emissions of air pollutants. However, the uncertainty of future control requirements impedes an owner or operator of a stationary source or group of stationary sources from making the investments necessary to voluntarily reduce emissions. The department of public health and environment should encourage all owners and operators of stationary sources or groups of stationary sources to voluntarily reduce emissions by providing, to the extent possible, certainty with respect to future control requirements.

Source: L. 98: Entire part added, p. 1044, 1, effective July 1.

25-7-1202. Definitions.

The definitions contained in section [25-7-103](#) shall apply to this part 12. In addition, the following definitions shall apply to this part 12:

(1) "Actual emissions" means the average amount of emissions, calculated in tons per year, that the stationary source or group of stationary sources emitted during the three-year period immediately prior to the date the proposed voluntary agreement was submitted to the division for review so long as the three-year time period is representative of normal unit operation. A different time period may be used to calculate actual emissions if such time period is more representative of normal unit operation than the three-year period immediately prior to the date the proposed voluntary agreement was submitted to the division.

(2) "Actual emission rate" means the average rate of emissions, calculated in pounds per million BTU or a comparable measure of the mass of emissions per unit of production, that the stationary source or group of stationary sources emitted during the three-year period immediately prior to the date the proposed voluntary agreement was submitted to the division for review so long as the three-year time period is representative of normal unit operation. A different time period may be used to calculate the actual emission rate if such time period is more representative of normal unit operation than the three-year period immediately prior to the date the proposed voluntary agreement was submitted to the division.

Source: L. 98: Entire part added, p. 1044, 1, effective July 1.

25-7-1203. Voluntary agreements.

(1) The owner or operator of any stationary source or group of stationary sources may obtain regulatory assurance, as described in section 25-7-1204, by entering into a voluntary agreement pursuant to this part 12. The parties to the proposed voluntary agreement shall negotiate in good faith to reach a voluntary agreement as expeditiously as possible. The owner or operator shall provide the division with any information necessary to evaluate the terms and conditions of the proposed voluntary agreement. The parties to the proposed voluntary agreement shall structure the emission limitations or emission reductions contained in a voluntary agreement so as to minimize costs and maximize the operational flexibility available to the owner or operator of the stationary source or group of stationary sources by using, among other things, numeric emission limits, annual emission limits, or emissions averaging across several emission points or sources, as appropriate.

(2) The division shall evaluate the emission limitations contained in a proposed voluntary agreement to determine whether they will result in reductions in actual emissions or actual emission rates, will result in emission reductions earlier than would be required by existing laws or regulations, will result in emission reductions significantly greater than required by existing laws or regulations, and will protect human health or the environment. The division shall also evaluate the assurance period proposed in the voluntary agreement based on the following factors:

- (a) The environmental benefits of the emission limitations and their significance;
- (b) The time necessary to achieve the emission limitations;
- (c) The capital, operating, and other costs associated with achieving the emission limitations; and
- (d) The energy impacts and environmental impacts not related to air quality of achieving the emission limitations.

(3) After conducting the evaluation required in subsection (2) of this section, the division may reject any proposed voluntary agreement that does not meet the requirements of this section. If the division rejects the proposed voluntary agreement, the owner or operator of the stationary source or group of stationary sources may petition the commission for review of the proposed voluntary agreement and the division's rejection thereof in accordance with the rules promulgated by the commission.

(4) If the division finds that the emission limitations and the assurance period proposed in a voluntary agreement meet the requirements of this section, the division shall submit the proposed voluntary agreement to the commission for approval. The commission shall provide the public with notice and an opportunity to comment on the proposed voluntary agreement. The commission shall act upon the voluntary agreement as expeditiously as possible. The commission shall approve the voluntary agreement unless it finds by substantial evidence that the proposed voluntary agreement is inconsistent with the requirements of this part 12. In no event shall the commission adopt emission limitations or an assurance period different than proposed in the voluntary agreement without the express written approval of the owner or operator of the stationary source or group of stationary sources subject to the agreement.

(5) If the commission approves the proposed voluntary agreement, the emission limitations and other provisions contained in the voluntary agreement shall be enforceable under this article against the stationary source or group of stationary sources in accordance with the terms and conditions contained in the voluntary agreement. Such enforcement may include any appropriate mechanism, including rule, permit condition, or consent order.

(6) No voluntary agreement or the underlying emission limitations under subsection (1) of this section shall be made federally enforceable without the written consent of the owner or operator of the stationary source or group of stationary sources.

(7) Except as provided in this part 12 or other applicable law, no voluntary agreement entered into under this part 12 shall alter any existing federal or state requirement otherwise applicable to the stationary source or group of stationary sources subject to such agreement.

(8) The commission may adopt any rules, procedures, or combination thereof necessary to implement this part 12. Notwithstanding this authority, the division may negotiate and evaluate proposed voluntary agreements, and the commission may approve proposed voluntary agreements and review the division's rejection of a proposed voluntary agreement as of July 1, 1998.

Source: L. 98: Entire part added, p. 1045, 1, effective July 1.

25-7-1204. Regulatory assurances.

(1) Except as provided in this section and in section [25-7-1205](#), the owner or operator of a stationary source or group of stationary sources who enters into a voluntary agreement pursuant to section [25-7-1203](#) shall be granted the regulatory assurances provided in this section. For the assurance period set forth in the voluntary agreement, not to exceed fifteen years, a stationary source or group of stationary sources subject to the voluntary agreement shall not be required to install additional pollution control equipment or implement additional pollution control strategies to reduce emissions of the air pollutant subject to the emission limitations contained in the voluntary agreement in order to comply with:

(a) State regulatory requirements that are based exclusively on state authority and that, either directly or indirectly, necessitate reductions in the air pollutant subject to the voluntary agreement; or

(b) Federal regulatory requirements that:

(I) Either directly or indirectly necessitate reductions in emissions of the air pollutant subject to the voluntary agreement;

(II) Establish generally applicable goals for the reductions of ambient concentrations of the air pollutant subject to the voluntary agreement or its chemical products; and

(III) Do not establish requirements that apply specifically to the stationary source or group of stationary sources.

(2) Notwithstanding subsection (1) of this section, the owner or operator of the stationary source or group of stationary sources may be required to comply with federal regulatory requirements if:

(a) The owner or operator has agreed in writing to abide by the requirements; or

(b) The commission promulgates the requirements in regulations that first require all other sources, including mobile sources, of the air pollutant within the affected region within Colorado to implement all available cost-effective measures to reduce emissions of the air pollutant. Such regulations, including the requirements contained therein applicable to the stationary source or group of stationary sources subject to the voluntary agreement, shall not apply to any stationary source or group of stationary sources unless and until the general assembly acts to postpone the expiration of the regulations in accordance with section [24-4-103](#), C.R.S.

Source: L. 98: Entire part added, p. 1047, 1, effective July 1.

25-7-1205. Exceptions.

(1) The regulatory assurances provided in section [25-7-1204](#) shall not apply to the following permit requirements, emission control requirements, or emission limitations:

(a) Additional requirements provided under section 111 of the federal act, as defined in section [25-7-103](#) (12), or parts 2 and 3 of this article by any modification or reconstruction of a stationary source after the date of the voluntary agreement;

(b) Emission limitations established for hazardous air pollutants identified in section 112 of the federal act;

(c) Requirements established to implement Title VI and section 112 (r) of the federal act; and

(d) Requirements applicable to mobile sources.

Source: L. 98: Entire part added, p. 1048, 1, effective July 1.

25-7-1206. Coal-fired power plants.

(1) (a) If the owner or operator of a coal-fired power plant or group of coal-fired power plants reduces the uncontrolled sulfur dioxide emission rate, measured in either pounds per million BTU or tons per year, by an average of at least seventy percent and the actual emission rate of sulfur dioxide by an average of at least fifty percent from one or more units located within the same airshed, regardless of whether the units are located on the same plant site, and such reductions are pursuant to a voluntary agreement entered into under section [25-7-1203](#), the assurance period for such units shall be a period ending fifteen years after the date established for achieving the voluntary emission limitations under the agreement.

(b) If the owner or operator of any coal-fired power plant that includes one or more units, each of which already has emission control technologies in place to reduce sulfur dioxide emissions by at least sixty-five percent from uncontrolled levels, significantly reduces the actual emission rate of sulfur dioxide and such reduction is pursuant to a voluntary agreement entered into under section [25-7-1203](#), the assurance period for such units shall be no more than fifteen years from the date the emissions reductions are achieved. Such a coal-fired power plant that is the subject of a certification of visibility impairment in a federally designated class 1 area as of July 1, 1998, may not enter into a voluntary agreement addressing the pollutants subject to the certification of visibility of impairment under section [25-7-1203](#) unless:

(I) The owner or operator of the plant has negotiated a settlement with the division that resolves all matters related to such certification of visibility impairment; and

(II) The voluntary agreement is fully consistent with the terms and conditions of the negotiated settlement.

(c) A coal-fired power plant or group of plants may achieve the emission reductions required by this section through a voluntary agreement that allows the plant or group of plants to control emissions by methods other than the installation and operation of pollution control equipment. Such methods may include but are not limited to burning low-sulfur coal, reducing the operation of units, retiring units, and changing fuels. If such methods are included in a voluntary agreement, the agreement shall include the procedure by which the division shall calculate the emission reductions to be obtained by such methods.

(2) It is the intent of the general assembly that the commission should consider any coal-fired power plant or power plants located within the same airshed that are achieving the emission limitations described in this section under a voluntary agreement to be in compliance with any emission limitation that is based on a technology requirement in the federal act. Such consideration should continue for a period of fifteen years after the date established in the voluntary agreement for achieving the emission limitations that are contained in the voluntary agreement. During the fifteen-year period, the commission, by rule, may require the coal-fired power plant to meet a different emission limitation based on a technology requirement in the federal act if:

(a) The commission finds that a different emission limitation is necessary to comply with the federal act; and

(b) The owner or operator of the coal-fired power plant is not required to begin installation of the required emission control technology unless and until the general assembly has acted to postpone the expiration of the commission's rule in accordance with section [24-4-103](#), C.R.S.

(3) The general assembly further intends that nothing in subsection (2) of this section shall be construed to create a precedent for the application or interpretation of either the "Colorado Air Pollution Prevention and Control Act", article 7 of title 25, C.R.S., or the federal act in any circumstance other than the execution of voluntary agreements between the state of Colorado and the owners and operators of coal-fired power plants in accordance with this part 12.

Source: L. 98: Entire part added, p. 1048, 1, effective July 1.

25-7-1207. Allowances.

Notwithstanding any other provision of this part 12, no owner or operator of a stationary source or group of stationary sources shall lose the benefits of regulatory assurances granted under this part 12 by transferring, selling, banking, or otherwise using allowances established under Title IV of the federal act or by any other federally required trading program of regional or national applicability as a result of entering into a voluntary agreement.

Source: L. 98: Entire part added, p. 1049, 1, effective July 1.

25-7-1208. Economic or cost-effectiveness analyses not required.

Notwithstanding section 25-7-110.5, the commission shall not conduct an economic impact analysis, cost-effectiveness analysis, or any other analyses required by section 25-7-110.5 in considering a voluntary agreement or the emission limitations contained therein.

Source: L. 98: Entire part added, p. 1050, 1, effective July 1.

PART 13
**THE SOUTHERN UTE INDIAN TRIBE/
STATE OF COLORADO ENVIRONMENTAL COMMISSION**

Law reviews: For article, "Air Pollution Control on the Southern Ute Indian Reservation", see 42 Colo. Law. 85 (August 2013).

25-7-1301. Legislative declaration.

(1) The general assembly hereby finds and declares that:

(a) The Southern Ute Indian tribe and the state of Colorado have entered into an intergovernmental agreement, as set forth in House Bill 00-1324, enacted at the second regular session of the sixty-second general assembly and found at 24-62-101, C.R.S.;

(b) Pursuant to said intergovernmental agreement, the tribe and the state have agreed to create a tribal/state environmental commission with the authority to promulgate rules and regulations for one air quality program for all lands, all persons, and all air pollution sources within the exterior boundaries of the Southern Ute Indian reservation;

(c) As governments that share contiguous physical boundaries, it is in the interest of the environment and all residents of the reservation and the state of Colorado to work together to ensure consistent and comprehensive air quality regulation on the reservation;

(d) The establishment of a single collaborative authority for all lands within the exterior boundaries of the reservation best advances rational, sound, air quality management and will minimize duplicative efforts and expenditures of monetary and program resources by the tribe and the state;

(e) Pursuant to the intergovernmental agreement, the tribe will seek delegation from the United States environmental protection agency to administer certain programs under the federal "Clean Air Act", 42 U.S.C. sec. 7401 et seq. (1970), as the same is in effect on November 15, 1990, such delegation being contingent upon the existence of the tribal/state commission and the intergovernmental agreement.

(2) It is the intent of the general assembly in enacting this part 13 to establish state authority for the creation of a commission that will establish a separate reservation air program for all lands within the exterior boundaries of the Southern Ute Indian reservation, as provided in the intergovernmental agreement. Therefore, for the duration of the intergovernmental agreement, all lands within the exterior boundaries of the reservation shall be subject to the authority of the commission and the provisions of the reservation air program, as described in this part 13 and in the intergovernmental agreement, and shall not be subject to the authority of the Colorado air quality control commission or the provisions of parts 1 to 12 of this article, except as otherwise provided in the intergovernmental agreement and in this part 13.

(3) In article IV of the intergovernmental agreement, the tribe and the state agreed that neither party intended to alter the existing sovereignty or jurisdiction of any party, and by approving the intergovernmental agreement, neither party conceded or agreed to any jurisdiction of the other party that would not otherwise exist. To the extent the state has jurisdiction over non-Indians on fee lands within the exterior boundaries of the reservation, it is the intent of the general assembly in enacting this part 13 that the commission shall exercise such authority for the purposes set forth in this part 13.

(4) The general assembly enacts this part 13 with the understanding that the tribe has also adopted tribal legislation that will carry out the terms of the intergovernmental agreement with respect to persons, air pollution sources, and lands within the reservation that are subject to the jurisdiction of the tribe.

(5) The general assembly hereby declares that its intent in enacting senate bill 02-235 is to ratify the continued existence of the Southern Ute Indian tribe/state of Colorado environmental commission after December 13, 2001.

Source: L. 2000: Entire part added, p. 107, 1, effective March 15. **L. 2002:** (5) added, p. 1093, 1, effective June 1.

25-7-1302. Definitions.

(1) "Commission" means the Southern Ute Indian tribe/state of Colorado environmental commission established by this part 13.

(2) "Division" means the division in the department of public health and environment that pertains to air pollution control.

(3) "EPA" means the United States environmental protection agency.

(4) "Fee land" means real property located within the reservation that is owned in fee by non-Indians.

(5) "Intergovernmental agreement" means the agreement entered into by the Southern Ute Indian tribe and the state of Colorado, as set forth in House Bill 00-1324, enacted at the second regular session of the sixty-second general assembly.

(6) "Reservation" means the Southern Ute Indian reservation, the exterior boundaries of which were confirmed in the act of May 21, 1984, Pub.L. 98-290, 98 Stat. 201, 202 (found at "other provisions" note to 25 U.S.C. sec. 668).

(7) "Reservation air program" means the regulatory air quality program established by the commission for all persons, lands, and air pollution sources within the exterior boundaries of the reservation.

(8) "State" means the state of Colorado.

(9) "Tribe" means the Southern Ute Indian tribe.

(10) "Trust land" means land within the reservation held in trust by the United States of America for the benefit of the tribe or individual Indians.

Source: L. 2000: Entire part added, p. 108, 1, effective March 15.

25-7-1303. Southern Ute Indian tribe/state of Colorado environmental commission created.

(1) There is hereby created the Southern Ute Indian tribe/state of Colorado environmental commission. The commission is not an agency of the state, but is an authority created pursuant to the intergovernmental agreement. The commission's actions are not subject to the provisions of the "State Administrative Procedure Act", article 4 of title 24, C.R.S., but rather are subject to procedural rules adopted by the commission.

(2) The commission shall have authority to adopt air quality standards, promulgate rules and regulations, and review appealable administrative actions pertaining to the reservation air program.

(3) It is the intent of the general assembly that the commission's rules, regulations, and orders shall be effective against all persons located within the reservation over whom the state would otherwise have jurisdiction as provided by state or federal law.

(4) The commission shall consist of three members appointed by the tribe and three members appointed by the governor. The initial members appointed by the governor shall serve terms as follows: One member shall serve until July 1, 2001, one member shall serve until July 1, 2002, and one member shall serve until July 1, 2003. All subsequent appointments by the governor shall be for terms of three years. The governor's appointees shall be residents of the state of Colorado. At least two of such appointees shall be residents of either Archuleta or La Plata county and at least one of such appointees shall reside on fee land.

(5) The governor may remove any member appointed by the governor at any time. The governor may not remove any member appointed by the tribe.

(6) Except as provided in section 25-7-1307, commission members shall not receive any compensation from the state of Colorado for their services in the conduct of commission business. Commission members may be reimbursed for necessary travel and other reasonable expenses incurred in the performance of their official duties out of funds collected or received by the tribe.

(7) Each member shall have one vote. The affirmative vote of a majority of all members of the commission on any matter within its powers and duties shall be required for any final determination made by the commission.

(8) The commission shall annually elect a member to preside as chair. The chair shall alternate annually between a tribal and a state member.

Source: L. 2000: Entire part added, p. 109, 1, effective March 15. **L. 2002:** (4) amended, p. 1093, 2, effective June 1. **L. 2010:** (4) amended, (SB 10-082), ch. 182, p. 655, 1, effective April 29.

25-7-1304. Commission - powers and duties - rules.

(1) The commission shall be the air quality policy-making and the administrative review entity for the reservation air program.

(2) The duties of the commission shall include the responsibility to:

(a) Determine the specific air quality programs under the federal "Clean Air Act", or other air quality programs, that should apply to the reservation, taking into account the specific environmental, economic, geographic, and cultural needs of the reservation;

(b) Promulgate rules and regulations that are necessary for the proper implementation and administration of those programs, including determining which administrative actions are appealable to the commission;

(c) Establish procedures the commission will follow in promulgating rules and regulations and for administrative review of actions taken by the tribe;

(d) Review and approve of a long-term plan, initially prepared by the tribe, to improve and maintain air quality within the reservation, which also takes into account regional planning in the La Plata and Archuleta county region;

(e) Monitor the relationships among the state and tribal environmental protection agencies to facilitate cooperation, information sharing, technical assistance, and training;

(f) Review enforcement actions according to the commission's adopted administrative procedures;

(g) Approve and adopt fees for permits and other regulatory services conducted by the tribe or the state, after considering a proposed fee schedule prepared by the tribe, and direct payment by air pollution sources to the tribe;

(h) Ensure consistency and adherence to applicable standards and resolving disputes involving third parties;

(i) Review emission inventories as developed by the tribe and state;

(j) Conduct public hearings pertaining to the adoption of rules and regulations, or relating to enforcement and permit appeals, and to issue orders resulting from those proceedings;

(k) Request tribal staff to perform any administrative or clerical functions necessary to issue orders and conduct commission business, or the commission, at its option, may appoint a technical secretary to perform such duties; except that no authority shall be delegated to adopt, promulgate, amend, or repeal standards or regulations, or to make determinations, or to issue or countermand orders of the commission;

(l) Any other duties necessary to accomplish the purposes of the intergovernmental agreement and as authorized by the state and tribe enabling legislation.

Source: L. 2000: Entire part added, p. 110, 1, effective March 15.

25-7-1305. Administration of reservation air program.

(1) After the commission has adopted rules and regulations for the reservation air program and after the EPA has delegated to the tribe administration of programs under the federal "Clean Air Act", the tribe shall administer and enforce the standards, rules, and regulations adopted by the commission for the reservation air program. The actions of the tribe pursuant to this section and this part 13 shall apply to any non-Indian air pollution source within the reservation as if the state had taken the same action.

(2) Until the EPA delegates to the tribe the authority to administer federal "Clean Air Act" programs, the Colorado air quality control commission and the division shall have authority under this article to continue to enforce any state program or permits, laws, and regulations for any non-Indian owned air pollution sources on fee land within the reservation. The division shall afford the tribe the opportunity to participate in its regulatory activities involving such sources, including the review of permit applications, notices of violations, or other orders, inspections, and other enforcement actions.

Source: L. 2000: Entire part added, p. 111, 1, effective March 15.

25-7-1306. Agencies of state to cooperate.

(1) Agencies of the state, including but not limited to the division, may provide technical assistance, training, and consultation to the tribe to carry out the purposes of the intergovernmental agreement and this part 13.

(2) The general assembly authorizes state agencies to perform duties on behalf of the commission to administer the reservation air program. State agencies may contract with the tribe to receive payment for the reasonable cost of the services state employees perform for the tribe or the commission.

Source: L. 2000: Entire part added, p. 111, 1, effective March 15.

25-7-1307. Funding for staff and program costs.

(1) The commission shall establish fees for permits and other regulatory services provided by the division or the tribe under this part 13. The commission shall direct air pollution sources to pay said fees to the tribe. The tribe may also apply for and receive EPA grants for the administration of the reservation air program.

(2) From the fees and grants, the tribe shall fund the staff and program costs necessary to perform the tribe's duties under the intergovernmental agreement and this part 13. The tribe shall pay the state for the personal services costs, at a rate of compensation determined by contract, of any state employee who participates in the administration of the reservation air program pursuant to the intergovernmental agreement or this part 13.

(3) It is the intent of the general assembly that fees and grants shall pay the necessary expenses of the commission. If the fees and grants are not sufficient to pay the commission's expenses, then the state and the tribe shall be responsible for funding associated with the participation of their respective representatives on the commission. State funding for its expenses must come from either a separate appropriation to the division or from funds otherwise available that the state is authorized to use for such a purpose.

(4) Prior to the establishment and collection of fees from air pollution sources under the reservation air program, the tribe may have expenses associated with its administration of permits for non-Indian owned sources on fee land. If the state continues to collect fees under section [25-7-114.7](#) from air pollution sources on fee lands, and if the tribe has expenses associated with the administration of a state-issued permit, then the division is authorized to use such permit and other fees to pay for the tribe's personal services costs. The state is authorized to contract with the tribe setting forth the reasonable cost for such services performed by the tribe.

Source: L. 2000: Entire part added, p. 112, 1, effective March 15.

25-7-1308. Administrative and judicial review of commission actions.

(1) Prior to the formation of the commission, the adoption of the federal legislation contemplated in the intergovernmental agreement, and actual EPA delegation of federal "Clean Air Act" programs:

(a) The state, through the Colorado air quality control commission and the division, shall exercise civil and criminal enforcement jurisdiction over non-Indians on fee lands within reservation boundaries for violations of applicable air quality permits, laws, and regulations.

(b) Appeals of state air enforcement action and other air quality-related decisions may be brought in state court consistent with state law and regulation.

(c) The tribe shall exercise jurisdiction over Indians, on all lands within the boundaries of the reservation, and over non-Indians on trust land, for violations of applicable tribal air quality regulations.

(d) Nothing in this part 13 is intended to restrict, diminish, or define the jurisdiction of the EPA.

(2) Following the adoption of the federal legislation and the EPA delegation of federal "Clean Air Act" programs:

(a) The tribe shall exercise civil enforcement jurisdiction over all persons and air pollution sources on all lands within reservation boundaries for violations of the reservation air program, subject to administrative review by the commission; and

(b) Consistent with the federal legislation provided in the intergovernmental agreement, the general assembly intends that final decisions of the commission shall be subject to review in federal district court in accordance with the provisions of the federal "Administrative Procedure Act".

(3) Following the formation of the commission and the adoption of the federal legislation provided in the intergovernmental agreement, it is the intent of the general assembly that the EPA will exercise criminal enforcement jurisdiction over any persons on all lands within reservation boundaries for criminal violations of the reservation air program.

Source: L. 2000: Entire part added, p. 112, 1, effective March 15.

Cross references: For the federal "Administrative Procedure Act", see 5 U.S.C. secs. 551-559, 701-706, 1305, 3105, 3344, 4301, 5335, 5372, and 7521.

25-7-1309. Repeal of part.

(1) This part 13 shall be repealed on the occurrence of any one of the following events:

(a) Termination of the intergovernmental agreement by either the tribe or the state; or

(b) Enactment of an explicit repeal by the general assembly, acting by separate bill.

(c) (Deleted by amendment, L. 2010, (SB 10-082), ch. 182, p. 655, 2, effective April 29, 2010.)

Source: **L. 2000:** Entire part added, p. 113, 1, effective March 15. **L. 2002:** (1)(c) amended, p. 1094, 3, effective June 1. **L. 2010:** (1) amended, (SB 10-082), ch. 182, p. 655, 2, effective April 29.