



**COLORADO**  
Department of Public  
Health & Environment

Dedicated to protecting and improving the health and environment of the people of Colorado

## **Air Quality State Implementation Plan Revisions Report**

**Submitted to the  
Colorado Legislative Council  
pursuant to the provisions of C.R.S. 25-7-133**

**Colorado Air Quality Control Commission  
January 11, 2016**



## INTRODUCTION

Under the Colorado Air Pollution Prevention and Control Act, the Colorado Air Quality Control Commission (Commission) is charged with the development of a comprehensive State Implementation Plan (SIP), which will assure attainment and maintenance of National Ambient Air Quality Standards and which must meet all other requirements of the federal Clean Air Act (CAA). This SIP shall be revised when necessary and appropriate and any revisions must be submitted to the United States Environmental Protection Agency (EPA) for review and approval. Under state law, prior to submitting any SIP revision to EPA, the Commission must submit a report to the legislature each year summarizing any changes or additions to the SIP made in the previous calendar year. See § 25-7-133, C.R.S. Pursuant to this statutory directive the Commission submits the following report describing its revisions to Colorado's SIP.

## STATUTORY REQUIREMENT

Section 25-7-133(1), C.R.S. sets forth the requirements governing the Commission's annual SIP Revisions Report to the legislature as follows:

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.

## STATE IMPLEMENTATION PLAN REVISIONS

In 2015, the Commission adopted the following revisions/additions to Colorado's SIP, which are being submitted for legislative review pursuant to Section 25-7-133(1), C.R.S.:

### Common Provisions Regulation Applicable to the Industrial Facilities

On November 19, 2015, the Commission adopted the Colorado Department of Health and Environment's (CDPHE) proposal to revise "affirmative defense" provisions consistent with EPA's SIP call to amend provisions applying to excess emissions during periods of startup, shutdown and malfunction (SSM). The rule revisions clarify that affirmative defenses are not available in federal court proceedings unless the court,

in considering the penalty factors in Section 113 of the CAA and exercising its discretion to assess civil penalties, decides to recognize or consider such affirmative defense or decides to take into consideration some or all of the air pollution mitigation factors described in the state's regulation. The Commission found that the rule revision will complement, rather than contradict, the requirements of the CAA because a federal court can, in its discretion, consider an affirmative defense or the factors contained in state regulation and the CAA.

Those affected by these revisions include industrial and commercial sources subject to the requirements of the rule. The affects were deemed to be positive for the state because including the affirmative defense provisions in the federal SIP makes the court aware of these provisions during litigation. Including the provisions in the SIP and also encourages industrial sources that that experience excess emissions during SSM conditions to self report to CDPHE and take rapid action to mitigate these emissions.

Opposition to including the provisions in the federal SIP, and instead retaining them as state-only, was expressed by a national environmental group who stated that including the affirmative defense provisions in the federal SIP would frustrate citizen suit enforcement, contrary to the CAA. CDPHE and industrial stakeholders argued to the contrary.

#### Regulation Number 4 Applicable to Residential Wood Heaters

On November 19, 2015, the Commission adopted updated wood stove certification requirements consistent with EPA requirements, along with other administrative revisions. Definitions, emission standards, certification and labeling requirements, and citation references were updated. The sale and operation of compliant devices will result in additional particulate matter emission reductions.

There was no adverse impact on woodstove manufacturers, distributors and retailers due to these revisions as the requirements are already in place at the federal level. There was no opposition to these rule revisions.

#### Revisions to Colorado's Regional Haze SIP: 5-Year Progress Report

All states are required to submit SIP revisions to the EPA every five years that evaluate the progress made for improving visual resources at each Class I National Park and Wilderness Area. CDPHE, in consultation with federal land managers, prepared a 5-year progress report that demonstrates that the state is making appropriate progress improving visibility conditions in Colorado's 12 Mandatory Federal Class I Areas. The report presents positive monitoring results and an overview of existing programs designed to reduce emissions and improve visibility throughout the state. No new regulations or requirements for sources or citizens were recommended, and the report was approved by the Commission on November 19, 2015.