

STATE OF COLORADO

DEPARTMENT OF TRANSPORTATION



DATE: January 3, 2014

TO: Transportation Commission

FROM: Herman Stockinger / Anthony DeVito

SUBJECT: Request to Adopt Temporary Rules Governing the Use of Tunnels on Colorado State Highways, 2 CCR 601-8 (the “Tunnel Rules”)

Purpose

The Department requests the Commission to adopt temporary rules so that they are in place during the inclement weather that may come during the remaining winter months of 2014 and the early spring months. By separate action item, the Department is requesting the Commission to open rule-making on the permanent Tunnel Rules, which, after meeting the requirements of the State Administrative Procedure Act, § 24-4-103, C.R.S. (the “APA”), the rules will become effective in July 2014. Adopting the rules on a temporary basis will allow them to take effect immediately.

The Tunnel Rules include reference to federal regulations governing the transport of hazardous materials. While the Colorado State Patrol is charged with rule-making and oversight of hazardous materials on Colorado highways, statute provides authority to the Department to oversee the transport of hazardous materials through the tunnels within CDOT’s jurisdiction.

The APA sets forth the process and requirements for all state agency rule-making. Section 24-4-103(6)(a), allows an agency to adopt temporary rules when imperatively necessary “to comply with state or federal law or federal regulations or for the preservation of public health, safety, or welfare and compliance with the requirements of [the APA] would be contrary to the public interest.”

Action Requested

By resolution, adopt temporary rules under the APA, 24-4-103(6)(a), C.R.S. which will cause the rules to be effective immediately, while the Department takes all steps necessary to comply with the APA regarding permanent rules. The Commission is given authority to open the Tunnel Rules pursuant to § 43-1-106(8)(k), § 42-4-106(7)(a) and (b), C.R.S., and § 42-20-301(3), C.R.S.

Executive Summary

The Department requests the adoption of temporary rules so that the state rules conform to federal regulations over the winter months, and much greater clarity is provided to the travelling public and those who must enforce the rules. The rule-making procedure under the

APA is a seven-month process. Specifically, rules governing the Eisenhower-Johnson Memorial Tunnel (“EJMT”) will directly impact the operations of tunnel personnel and the efficient movement of traffic approaching and through the EJMT. The APA requires compliance with all steps of the rule-making process following the adoption of temporary rules. The Department will meet all requirements of the APA with regard to these rules and the permanent rules that are opened contemporaneously with this action item.

Background

(Please see action item concerning the opening of permanent Tunnel Rules for greater detail). The Commission most recently adopted the Tunnel Rules in 1986, with a subsequent adoption making minor changes in 2008. These minor changes did not include conforming the citations to federal regulations to the current law; therefore, the federal citations, which have changed significantly since 1986, are currently obsolete.

Details

(Please see action item concerning the opening of permanent Tunnel Rules for greater detail).

Key Benefits

The Tunnel Rules impact the travelling public and specifically motor carriers. The proposed rules legally conform to federal regulations and make the rules easier to understand.

Next Steps

Temporary rules expire 120 days after adoption. The Department will take the required steps to process the permanent rules prior to the expiration of temporary rules.



January 7, 2014

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Mark Larson

Mary Frances Nevans
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Re: Temporary Rulemaking

Dear Mary Frances,

This letter is written to demonstrate that the Colorado Wyoming Petroleum Marketers Association supports the adoption of temporary rules that have been submitted by staff to the Transportation Commission to be considered at the January 16, 2014 meeting. CWPMA believes that it is important that the state have the rules in place this winter.

As was discussed in previous stakeholder meetings, CWPMA understands that if the Commission does not adopt temporary rules, then our members will still have to operate under the old rules this winter and spring. Because of the steps required by the Administrative Procedure Act, permanent rules will not be effective until June/July. The current rules are simply not adequate and the temporary rules need to be implemented now.

CWPMA supports the rationale for temporary rules, which will allow the new rules to take effect in January. We believe the new rules will provide clear guidance to CDOT personnel, Colorado State Patrol, the petroleum marketer and other affected industries, as well as and the general motoring public, over the winter months when Loveland Pass is closed. This will eliminate much confusion regarding staging locations, metering times through the EJMT, and application of the correct federal regulations regarding hazardous materials.

CWPMA understands, importantly, that input and changes can still be made to the permanent rules once that process has begun.

CWPMA urges the Commission to move forward now on temporary rulemaking to the benefit of all concerned. Should you have any questions that I may address, please let me know.

Sincerely,

Mark Larson

Resolution # TC -

Adopt Temporary Rules Governing the Use of Tunnels on Colorado State Highways, 2 CCR 601-8 and Direct the Department to Comply with all Requirements of the State Administrative Procedure Act.

WHEREAS, § 43-1-106(8)(k) C.R.S., § 42-4-106 (7)(a) and (b), and C.R.S., § 42-20-301(3), authorize the Transportation Commission of Colorado (the “Commission”) to promulgate rules governing the use of tunnels on Colorado state highways; and

WHEREAS, the current rules were last updated in 1986, with minor revisions in 2008; and

WHEREAS, the current rules require updating in order to conform to current federal regulations, eliminate obsolete information and provide clearer guidance to the travelling public; and

WHEREAS, pursuant to Governor Hickenlooper’s Executive Order D 2012-002, the proposed rules are drafted in clear language to make them accessible to CDOT personnel, Colorado State Patrol, motor carriers and the travelling public; and

WHEREAS, the Commission finds that temporary adoption of the Tunnel Rules is imperatively necessary for the health, safety and welfare of the travelling public so that the Rules will be immediately in conformance to federal regulations; and

WHEREAS, immediate adoption is necessary so that clear guidance is provided to CDOT tunnel personnel, the Colorado State Patrol, motor carriers and members of the travelling public during the inclement weather in the remaining winter and early spring months of 2014; and

NOW THEREFORE BE IT RESOLVED, the Transportation Commission herein adopt temporary rules Governing the Use of Tunnels on Colorado State Highways, 2 CCR 601-8 and directs the Department to take all necessary steps to comply with the State Administrative Procedure Act.

Transportation Commission Secretary Date