



# COLORADO

## Transportation Commission

4201 East Arkansas Avenue, Room270  
Denver, CO 80222-3406

DATE: September 17, 2015  
TO: Transportation Commission  
FROM: Kyle Lester / Herman Stockinger  
SUBJECT: Adoption of Proposed Amendments to the Rules Pertaining to Transport Permits for the Movement of Extra-Legal Vehicles or Loads ("Oversize Overweight Rules" or "OSOW Rules")

### Purpose

To update the Rules Pertaining to Transport Permits for the Movement of Extra-Legal Vehicles or Loads ("OSOW Rules"), 2 CCR 601-4 in conformance with current law and practice.

### Action

To adopt the proposed amendments to the OSOW Rules, 2 CCR 601-4.

### Background

CDOT has 22 sets of rules; of these, the Commission has statutory authority to promulgate 13 sets; the remaining 9 sets are under the authority of the Executive Director. The OSOW Rules are under the authority of the Commission. Because administrative Rules have the force of law, any change in wording must follow the full process set forth in the Administrative Procedure Act. The many steps in this process include: requesting that stakeholders review the rule changes, requesting the Commission open the rule making process, gathering public input, holding a hearing, the Administrative Hearing Officer recommending a course of action to the Commission, requesting the Commission adopt the rules, and finally, requesting review by the Attorney General's Office.

The OSOW rules were last updated on June 30, 2012. That update was based on statutory changes resulting from legislation in 2011 (HB11-1192, HB 11-1163, and HB11-1279) which amended § 42-4-505(3)(a) C.R.S. and § 42-4-510 C.R.S.

The Commission opened the OSOW rules by TC Resolution -15-6-3 on June 18, 2015. A rule-making hearing was held on July 31, 2015. As stated in greater detail in Administrative Hearing Officer Frenz's findings, the proposed amendments are now submitted to the Commission for adoption.



## Details

While an explanation of all proposed changes to the rules is set forth below, a copy of the red-line rules showing the changes is available upon request.

The proposed Rule amendments are a result of: (1) legislation in 2014 regarding a new annual fleet permit; (2) the Department's implementing an electronic permitting system and lessening the burden on drivers of commercial motor vehicles to carry paper documents; (3) conforming Auxiliary Power Unit ("APU" requirements based on changes in the federal regulations made pursuant to 23 U.S.C. 134, 135 AND 150 ("Moving Ahead for Progress in the 21<sup>st</sup> Century" or "MAP-21"); and (4) a practical revision of the Rules meant to clarify a statute that speaks to certain roads with low clearances. The proposed amendments are made to:

1. Conform the rules to HB14-1160, codified at § 42-4-510(11)(a)(VII)(D), C.R.S., which created a new annual fleet permit for non-interstate overweight divisible loads pertaining to power units utilizing a trailer with two or three axles. See Rule 300.6 and 300.11.
2. Incorporate processes for the new electronic permitting system. The changes to the Rules include:
  - Stating that a copy of the Rules will be available electronically on the Department's website, and need not be carried in hard copy in the commercial motor vehicle. See Rules 103.5 and 309, and 309.1.2;
  - Coordinating the Rules with CVIEW (Commercial Vehicle Information Exchange Window) used by law enforcement;
  - Modifying the application information required for the system. See Rules 303.1 through 303.4, 303.18, and 303.19;
  - Providing an option of having the Transport Permit available electronically while operating the commercial motor vehicle. See Rule 309.1.1; and
  - Adhering to routing restrictions. See Rule 309.1.3.
3. Conforming the Auxiliary Power Unit ("APU") requirements to a change in weight made in MAP-21, increasing it from 400 to 550 lbs. See 23 U.S.C. 127. This only concerns permitted vehicles. This change also conforms CDOT's Rules with the Colorado Port of Entry Rules for Commercial Motor Carrier Size, Weight and Clearance, 8 CCR 1507-28, Rule IV B.2 a "Auxiliary Power Units (APU) and Idle Reduction Technology Units" (stating that any vehicle that uses an APU or idle reduction technology unit in order to reduce fuel use and emissions resulting from engine idling shall have the actual weight of the APU or idle reduction technology unit exempted from the calculation of the actual axle and Gross Vehicle Weight (GVW), up to 550 pounds).
4. Clarify height restrictions in § 42-4-504(1), C.R.S., which provides: "No vehicle unladen or with load shall exceed a height of thirteen feet; except that vehicles with a height of



fourteen feet six inches shall be operated only on highways designated by the department of transportation.” The Department believes it is better to provide information to motor carriers where the low structures are located in the state rather than where clearances are in excess of 13 feet in height (up to 14 feet six inches in height). In relation to the number of highway miles, there are only a few low clearance structures. See Rules 103.1.2, 305.1, and 306.1.

### Key Benefits

The proposed changes in the Rules align with MAP-21, with state statutory changes from 2014, with changes as a result of CDOT’s electronic permitting process, and with current practice.

### Options and Recommendations

- Adopt the Rules (staff supported option);
- Defer the decision to adopt the rules pending the provision of additional information; or
- Decline to adopt the rules at this time.

### Attachments

- Resolution
- Administrative Hearing Officer Summary
- A Red-line copy of Rules showing proposed amendments is available upon request





**COLORADO**  
Department of Transportation  
Center for Procurement and Contract Services

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Date: August 28, 2015  
To: Transportation Commission  
From: Chris Frenz, Administrative Hearing Officer  
Subject: Recommendation to approve proposed changes to  
2 CCR 601-4 "Rules Pertaining to Transport Permits for the Movement of Extra-  
Legal Vehicles or Loads ("Oversize Overweight Rules" or "OSOW Rules")

**Administrative Hearing Officer Summary on  
The Public Rule-Making Hearing Regarding**

**Background**

Under a delegation of authority from the Transportation Commission executed June 23, 2015, Resolution No. TC-15-6-3, I, Chris Frenz, acted as the Administrative Hearing Officer and presided over a public rule-making hearing on July 31, 2015, in the auditorium of CDOT Headquarters, 4201 E. Arkansas Avenue in Denver, Colorado. A court reporter was present and a transcript of this hearing was taken.

The public hearing was held to meet the requirements of § 24-4-103(4)(a), C.R.S., of the State Administrative Procedure Act with regard to 2 CCR 601-4, referred to as the "Oversize Overweight Rules" or "OSOW Rules." The authority for the Transportation Commission to promulgate and amend these rules is found in § 42-4-510(1)(b)(I), § 42-4-510(1.7)(b)(II)(B), and § 43-1-106(8)(k), C.R.S.

**Hearing Summary**

Acting as the Administrative Hearing Officer, I opened the hearing at 2:40 p.m. The following people testified: Mary Frances Nevans, the CDOT Rules Administrator; Alison Kent, an intern with the Office of Policy and Government Relations; Dan Wells, the manager for the Oversize Overweight Permit Office; Ray Burgener, co-director of Truckers for Common Sense; and Greg Fulton, president of the Colorado Motor Carriers Association.

Below is a summary of the proposed changes under 2 CCR 601-4:

- Rules 300.8 and 300.11: conforms the rules to the change in law which created a new annual fleet permit for non-interstate overweight divisible loads pertaining to power units utilizing a trailer with two or three axles;

- Rules 103.5, 309, 303.4, 303.18, 303.19, 309.1.1, and 309.13: conforms the rules to the Department's electronic permitting system;
- Rule 713: increases the weight allowance for Auxiliary Power Units from 400 pounds to 550 pounds; and
- Rules 103.1.2, 305.1, and 306.1: revises the rules to clarify height restrictions.

### **Factual Findings**

Mary Frances Nevans, the CDOT Rules Administrator, provided testimony with regard to the Department's meeting its requirements under the State Administrative Procedure Act. (Transcript p. 6, ll. 8-25, p. 7, ll. 1-15).

Alison Kent, who is interning with the Office of Policy and Government Relations, presented the exhibits. (Transcript p. 7-13). The Statement of Basis for the Rules is contained in Exhibits 10-12. A cost benefit analysis was not required (Exhibit 4 B, C and D). Ms. Kent demonstrated how the Department complied with the requirements of the Administrative Procedures Act. Specifically, Ms. Kent noted that the Department:

- Obtained proper hearing delegation from the Transportation Commission (Exhibits 1 and 2).
- Filed a timely Notice of Rulemaking with the Secretary of State which was published in the Code of Colorado Regulations (Exhibit 3A, B and C).
- Filed the rules with the Department of Regulatory Agencies (Exhibit 4A).
- Posted the proposed rules to the CDOT website on July 6, 2015 (Exhibit 5).
- Notified interested parties of the date, time, and location of the hearing (Exhibit 7).
- Provided an opportunity for comment and maintained a record of the comments on the repeal of these rules (Exhibit 7, A, B, C and D).
- Will maintain a permanent file of the rulemaking record (Exhibit 9B).
- Posted timely notice of the rulemaking hearing in the lobby of the Department Headquarters Building and the Shumate building (Exhibit 9C).

Dan Wells, the manager for the Oversize Overweight Permit Office, testified that the Department initiated the rule-making as a result of changes in governing state and federal law and improved processes within the Department. (Transcript p. 14, ll. 9-12).

Greg Fulton, the president of the Colorado Motor Carrier Association, testified to thank the Department for reaching out to stakeholders about the changes and to applaud the Department's changes to fleet permits. (Transcript p. 19, ll. 13-25). Mr. Fulton also thought it was an excellent idea to clarify the notification system for height restrictions. (Transcript p. 19, ll. 23-25, p. 20, ll. 1-10). Mr. Fulton also agreed with the changes to the weight allowance for auxiliary power units (Transcript p. 20, ll. 22-24).

Ray Burgener, co-director of Truckers for Common Sense, based in Fort Collins, Colorado, testified that he appreciates the Department's effort regarding the fleet permit for two and three

axles, but would like to make a record that this still requires another permit for quad axles. (Transcript p. 18, ll. 21-25, p. 19, ll. 1-2).

Mr. Burgener did not request a specific language change in the proposed rules; however, in order to fully address the issue he raised, I permitted CDOT to respond via email to this comment. On August 3<sup>rd</sup>, 2015, Dan Wells provided me with the following response:

In response to Mr. Burgener's claim that two different permits are required for Non-Interstate Overweight Divisible load quad and 2/3 trailer axle permits, CDOT wishes to state that Mr. Burgener is correct. Separate overweight divisible loads are needed for the Quad and 2/3 trailer axle permits due to the fact that this is how the legislature established these different permits in two different legislative sessions. HB 08-1257 established the Non-Interstate Overweight Divisible load Quad axle annual permit. This permit allows for a maximum weight of 110,000 lbs. and requires that the vehicle have a quad axle grouping. HB 09-1318 established the Non-Interstate Overweight Divisible load permit for a tractor operated in combination with a semi-trailer that had a tandem or triple axle grouping and allowed for a maximum weight of 97,000 lbs. The statute established an annual and a 6-month permit. Since the establishment of the tandem/triple permit, HB 11-1279 revised the permit to include trailers (not just semi-trailers) with two or three axles. Nothing else changed [in statute] so it appears the will of the legislature continues to be that these be two separate permits. Any change to make it possible to have one divisible load overweight permit rather than two would require action on the part of the legislature changing § 42-4-510, C.R.S.

Regarding Mr. Burgener's testimony which advocated a change in permitting by CDOT, I conclude that since the permitting requirements are set forth in statute, they must be changed by the legislature, given that administrative rules must stay within the scope of the statute and may not alter or contradict it.

The testimony established that amending the rules is warranted for several reasons. First, changes to Rules 300.8 and 300.11 are required to conform the rules to House Bill 14-1160, codified at § 42-4-510(11)a(VII)(D), C.R.S. (Transcript, p. 14, lines 13-20). Second, the Department's implementation of an electronic permitting system lessens the burden on drivers of commercial motor vehicles to carry paper documents (Transcript, p. 14, ll. 21-24). Changes to Rules 103.5, 309, 303.4, 303.18, 303.19, 309.1.1, and 309.13 conforms to the electronic permitting system. (Transcript p. 15, ll. 1-18). Third, changes to Rule 713 are based on changes in the federal regulations made pursuant to MAP-21, 23 U.S.C. 127. (Transcript p. 15, ll. 19-24). This change also conforms the rules to the Department's rules with the Colorado Port of Entry rules for Commercial Motor Carrier Size, Weight and Clearance, 8 C.C.R. 1507-28, Rule IV B.2. (Transcript p. 16, ll. 3-14). Finally, the practical revisions to Rules 103.1.2, 305.1, and 306.1 provide information to motor carriers regarding where low structures are located, rather than where the clearances are above thirteen feet, as there are very few low clearance structures. (Transcript p. 16, ll. 18-25, p. 17, ll. 1-11).

At the conclusion of the testimony, Andrew Frohardt, an Assistant Attorney General, provided his opinion that the Department had complied with the State Administrative Procedure Act. (Transcript p. 31, ll. 18-25).

**Findings and Conclusions of Law**

I have reviewed the entire record of this proceeding. The record consists of all testimony and exhibits from the July 31, 2015 hearing. I find that:

1. The Transportation Commission has the authority to amend these rules.
2. The Department met all of the requirements of the State Administrative Procedure Act, § 24-4-103 C.R.S.
3. There is sufficient evidence in the record to support amending the rules.

**Recommended Decision**

The next step in the rule-making process is a review of this submitted record of the proceedings prior to amending the rules. Any action must be based upon, and supported by, the record. Copies of the entire exhibit packet are available for review. The record supports amending the rules.

Having reviewed the entire record of this proceeding, including Exhibits 1 through 12 and having heard oral testimony and reviewed any written testimony provided, and being fully apprised of this matter, acting as Administrative Hearing Officer in this matter, I recommend that the Transportation Commission amend Rule 2 CCR 601-4.



Chris Frenz  
Hearing Officer

8/28/15

Date

**Resolution # TC-**

**Adopt Amendments to the Rules Pertaining to Transport Permits for the Movement of Extra-Legal Vehicles or Loads (“OSOW Rules”), 2 CCR 601-4.**

**WHEREAS**, § 42-4-510(1)(b)(I), § 42-4-510(1.7)(b)(II)(B), § 42-4-511(1) and § 43-1-106(8)(k) C.R.S. authorize the Transportation Commission of Colorado (“Commission”) to promulgate rules regarding permits for extra-legal vehicles or loads; and

**WHEREAS**, by Resolution TC-15-6-3, dated June 23, 2015, the Commission delegated authority to an Administrative Hearing Officer for the purposes of conducting a rule making hearing, making a complete procedural record of the hearing, and submitting that record and any recommendations to the Commission for its review and action concerning proposed amendments to the OSOW Rules; and

**WHEREAS**, a hearing was held on July 31, 2015, with Administrative Hearing Officer Chris Frenz presiding; and

**WHEREAS**, Hearing Officer Frenz made findings after considering public comment recommending that the Commission adopt the OSOW rules; and

**WHEREAS**, the proposed amendments to the OSOW Rules are based on HB14-1160, codified at § 42-4-510(11)(a)(VII)(D), C.R.S., which established a new annual fleet permit for non-interstate overweight divisible loads with power units utilizing a trailer with two or three axles; and

**WHEREAS**, the proposed amendments include the Department’s implementation of an electronic permitting system; and

**WHEREAS**, the proposed amendments conform Auxiliary Power Unit (“APU”) requirements based on changes in the federal regulations made pursuant to MAP-21 found at 23 U.S.C. 127 which increased the weight allowance from 400 to 550 lbs. for . permitted vehicles; and

**WHEREAS**, the proposed amendments clarify height restrictions in § 42-4-504(1), C.R.S.

**NOW THEREFORE BE IT RESOLVED**, after review and consideration of the rule making record and the findings of the Administrative Hearing Officer, the Commission herein adopts the proposed amendments to the Rules Pertaining to Transport Permits for the Movement of Extra-Legal Vehicles or Loads, 2 CCR 601-4.

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**Herman Stockinger**  
**Transportation Secretary**

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**Date**