



COLORADO
Department of Transportation
Office of Policy and Government Relations

2829 W. Howard Place
Denver, CO 80204-2305

DATE: June 20, 2019
TO: Transportation Commission
FROM: Herman Stockinger / Kyle Lester
SUBJECT: Adopt proposed changes to the Rules Regarding Travel Restrictions On State Highways,
2 CCR 601-14

Purpose

To accept the Hearing Officer's recommendation and adopt the changes to the Rules Regarding Travel Restrictions On State Highways ("Rules"), 2 CCR 601-14.

Action

To pass a resolution to adopt the changes to the Rules based on the Hearing Officer's recommendation from the rulemaking hearing held on May 6, 2019.

Background

On February 21, 2019, the Transportation Commission, by Resolution No. TC-19-02-14, authorized a Hearing Officer to conduct a hearing on the proposed changes to the Rules. The proposed changes are primarily the result of the Department's collaboration with the Colorado State Patrol, Department of Public Safety, Colorado Motor Carriers Association and the Colorado Wyoming Petroleum Marketers Association over the last two years to completely revise these rules and simplify the language to make them easier to understand to the travelling public. The key proposed change removed the codes used to communicate when chains or snow tires were required and replaced them with simpler language.

On May 6, 2019, the Hearing Officer held a rulemaking hearing to receive public comment on the Rules. Members of the public were present and testimony was provided by Greg Fulton, representing the Colorado Motor Carriers Association, and Steve Topalian, speaking on behalf of Enterprise Holdings, the parent company for Enterprise Rent-A-Car, National Car Rental, and Alamo Rental Car. The proposed changes to the Rules include changes based on HB 19-1207. The Hearing Officer reviewed the entire record of this proceeding, including the 9 exhibits from the May 6, 2019 hearing, and found that the requirements of the State Administrative Procedure Act had been satisfied, that there was sufficient evidence in the record to support the proposed changes to the Rules, and that the Commission has the authority to adopt the proposed changes to the Rules.

Next Steps

By adopting the proposed changes to the Rules, the Commission authorizes staff to move forward with the rulemaking process.

Attachments

Resolution
Red-line copy of Rules showing proposed changes
Hearing Officer Summary and Recommendation
Hearing Transcript and Exhibits (available upon request)



Resolution # TC-

Adopt Proposed Changes to the Rules Regarding Travel Restrictions On State Highways, 2 CCR 601-14.

WHEREAS, § 42-4-106(5)(b), C.R.S., authorizes the Transportation Commission of Colorado (“Commission”) to adopt rules that implement § 42-4-106(5), C.R.S.; and

WHEREAS, § 42-4-106(5), C.R.S., provides guidance on the Department's authority to restrict travel for the protection and safety of the traveling public, including the ability to require traction devices, tire chains, and adequate tires when dangerous driving conditions exist; and

WHEREAS, the existing rules adopted in 2012 used codes 15 through 18 to communicate to the traveling public the type of tires, the alternate traction devices, or tire chains required depending upon the severity of the driving conditions; and

WHEREAS, the proposed changes to the rules eliminate the use of codes 15 through 18 and instead use plain language to make it easier for the traveling public to understand the requirements; and

WHEREAS, the proposed changes also incorporate changes from HB 19-1207 concerning tire tread depth and other specifications; and

WHEREAS, on February 21, 2019, by Commission Resolution No. TC-19-02-14, the Commission authorized the Department to open 2 CCR 601-14; and

WHEREAS, on May 6, 2019, a CDOT Hearing Officer held a public hearing to receive public comment on the proposed changes to the rules; and

WHEREAS, the Hearing Officer recommended to the Commission that the rules be adopted.

NOW THEREFORE BE IT RESOLVED, after review and consideration of the rulemaking record and the findings of the Hearing Officer, the Commission adopts the proposed changes to the Rules Regarding Travel Restrictions On State Highways, 2 CCR 601-14.

Herman Stockinger, III
Transportation Secretary

Date

2 CCR 601-14
Rules Governing Chain Law and Passenger Vehicle Traction Law Requirements on the State Highway System

2 CCR 601-14

Statement of Basis and Purpose and Statutory Authority

The purpose of these rules is to describe the travel conditions, types of vehicles, and the locations which require tire chains, adequate types of tires, four-wheel drive or other means to provide adequate traction, when the Department determines such means are necessary to protect the safety of the travelling public and to minimize the occurrence of road closures. The Department revised the rules in order to make them more understandable to the travelling public. It removed the codes used to communicate when chains or snow tires were required and replaced the codes with the clearer categories pertaining to Passenger Vehicles and Commercial Motor Vehicles, of "chain law in effect" meaning chains are required for vehicles 16,001 pounds GVWR or more and used in commerce, or 16,001 pounds GVWR and transports at least 16 passengers. It also added a section on "Passenger Vehicle Chain Laws" to and updated the rules to current practice, when road conditions warrant chains on all vehicles, "Passenger Vehicle Chain Law in Effect" will be communicated rather than referencing codes. The new Rules explicitly refer to "Non-Commercial or Recreational Vehicles" and state that they fall within the specified type of travel restriction depending on the vehicle weight and the road and weather conditions. ~~the Chain Law requirements when they are in effect. Additionally, the updated rules changed the code to "Passenger Vehicle Traction Law" meaning adequate types of tires or certain types of vehicles were required in order to safely drive in certain road conditions.~~ These changes to the rules reflect the now widespread use of communicating via electronic messaging signs and via other means of technology.

Commented [NM1]: The Statement of Basis and Purpose only summarizes why the rules are being updated. This is being deleted because the language was causing confusion and the details are found within the rules.

The rules shall apply to all state highways on the State Highway System as defined in § 43-2-101(1), C.R.S. or as determined by the Transportation Commission. These rules are based on the following statutory sections: § 42-4-106(5)(b) C.R.S. (rule-making authority granted to the Transportation Commission); § 42-4-106 C.R.S. (setting forth who may restrict the use of highways); § 43-2-101(1) C.R.S. (defining State Highway System); § 42-4-214 C.R.S. (setting forth required visual signals on service vehicles), and § 42-4-1701(4)(a)(I)(F) C.R.S. (penalties for non-compliance).

1.00 Definitions

- 1.01 ~~"Alternative-Alternate~~ Traction Device" or "ATD" means an approved non-traditional traction device differing from metal chains in construction, material or design but is capable of providing traction comparable to that of such metal chains or cables under similar conditions, which is listed on the CDOT Approved Product List ("APL").
- 1.02 "Authorized Service Vehicles" shall mean such highway or traffic maintenance vehicle as is publicly owned and operated on a highway, by or for a governmental agency, the function of which requires the use of service vehicle warning lights as prescribed by state

Commented [NM2]: This is being changed to be consistent with HB 19-1207

law and such other vehicles having a public service function, including, but not limited to, public utility vehicles and tow trucks, as determined by the Department of Transportation under § 42-4-214(5), C.R.S. Some vehicles may be designated as both an Authorized Emergency Vehicle and an Authorized Service Vehicle. See § 42-1-102(7) C.R.S.

1.03 "Autotransport Carriers" means vehicles specifically designed and used for the transport of automobiles.

1.04 "Chain Law" means the requirement imposed by the Department for all vehicles using certain areas of the State Highway System during periods of adverse road and weather conditions in order to protect the safety of the travelling public and prevent accidents resulting in traffic issues and road closures. Notification of Chain Law requirements shall occur as set forth in Rule 2.02 below, based on assessed road and weather conditions.

Commented [NM3]: Change made to clarify that the requirements will be based on both road and weather conditions

Commented [NM4]: Revised sentence based on comment received about simplifying the definition.

1.05 "Colorado State Patrol" shall mean the organization created by § 24-33.5-201, C.R.S.

1.06 "Commercial Motor Vehicle" or "CMV" means a vehicle having a manufacturer's ~~GV~~ GVWR of at least 16,001 pounds and used in commerce on public highways or a GVWR of at least 16,001 pounds and used to transport at least 16 passengers. § 42-4-235(1)(a), C.R.S.

Commented [NM5]: Typo

1.07 "Department" means the Colorado Department of Transportation.

1.08 "Drive Wheel Tire" means a tire attached to a wheel through which tractive force is transferred from the vehicle to the road causing the vehicle to move.

1.09 "GVWR" means gross vehicle weight rating.

1.10 "Motor Vehicle" means the same as defined in § 42-1-102(58), C.R.S. For purposes of these rules, the term Motor Vehicle shall include Passenger Vehicles, Commercial Motor Vehicles and Recreational Motor Vehicles.

1.11 "Non-Commercial or Recreational Vehicle" means a truck, or unladen truck tractor, operated singly or in combination with a trailer or utility trailer or a motor home, which truck, or unladen truck tractor, or motor home is used exclusively for personal pleasure, enjoyment, other recreational purposes, or personal or family transportation of the owner, lessee, or occupant and is not used to transport cargo or passengers for profit, hire, or otherwise to further the purposes of a business or commercial enterprise." § 42-1-102(61), C.R.S. For the purposes of these rules, Non-Commercial or Recreational Vehicles are categorized by weight as either a Commercial Motor Vehicle or a Passenger Vehicle.

Commented [NM6]: This was added to clarify that under these rules, Non-Commercial or Recreational Vehicles are treated as either passenger vehicles or commercial motor vehicles depending on whether they weigh less or more than 16,001 pounds GVWR

1.12 "Passenger Vehicle" means any vehicle with four or more tires capable of transporting up to 15 passengers and that is less than 16,001 pounds GVWR.

1.13 "Recreational Motor Vehicle" means the same as "Non-Commercial or Recreational Vehicle."

1.14 "~~all~~ **Passenger Vehicle** Traction Law" shall mean the requirement imposed by the Department for ~~all~~ Passenger Vehicles using certain areas of the State Highway System during periods of adverse **road and** weather conditions in order to protect the safety of the travelling public and prevent accidents resulting in traffic issues and road closures.

Commented [NM7]: Added for clarification

Commented [NM8]: Deleted to eliminate unintended confusion

Commented [NM9]: Change made to clarify that the requirement will be based on both road and weather conditions

1.15 "Variable Message Signs" or "VMS" shall mean the traffic control device electronic messaging signs on the State Highway System used to advise the travelling public through electronic or static means of road conditions and travel requirements including Passenger Vehicle Traction Law or Chain Law.

2.00 Means of Notification Regarding Road Conditions and Travel Requirements

2.01 Who May Implement Travel Requirements on state highways. Any Department maintenance supervisor or their designee shall have the authority to implement the Chain Law or Passenger Vehicle Traction Law. It is within their discretion to determine when road, weather and driving conditions, are such that require the Chain Law or Passenger Vehicle Traction Law to be in effect.

2.02 The applicable Traction and Chain Law requirements will be messaged out through the CDOT notification process, to include official traffic control devices including Variable Message Signs, static signs, official CDOT travel website, telephonic messaging system, email and text notifications and other technologies. Notifications will specify by mile points and by exit number when chains are required.

2.03 Chain Law and Passenger Vehicle Traction Law shall be in effect until notice is provided by an official traffic control sign or other CDOT notification, or when the center line or lane lines are visible on a descending grade.

3.00 Passenger Vehicle Traction Law

3.01 Passenger Vehicles are vehicles under 16,001 pounds gross vehicle weight rating (GVWR) and vehicles capable of transporting up to 15 passengers. ~~Passenger~~ Vehicles that meet these requirements include but are not limited to:

Commented [NM10]: Change made to clarify that the following list explains which vehicles are categorized as passenger vehicles

3.01.1 A vehicle towing a trailer ~~or another vehicle, snowmobile, camper, or ATV;~~

Commented [NM11]: Change made because snowmobiles, campers, and ATVs are not vehicles, and they are normally transported on a trailer

3.01.2 Non-Commercial or Recreational Vehicles ~~or recreational buses~~ less than 16,001 pounds GVWR ~~or which transport 15 passengers or less;~~ and

Commented [NM12]: Deleted to be consistent with language in 1.11 that Non-Commercial or Recreational Vehicles are categorized in these Rules based on weight.

3.01.3 Passenger vans (up to 15 passengers).

3.01.4 A Passenger Vehicle can be a two-wheel drive vehicle, an all-wheel drive vehicle or a four-wheel drive vehicle.

3.02 The Passenger Vehicle Traction Law applies to Non-Commercial or Recreational ~~Motor~~ Vehicles under 16,001 pounds GVWR.

Commented [NM13]: Deleted for consistency when referring to Recreational Vehicles

3.03 To travel on a state highway when the Passenger Vehicle Traction Law is in effect, a Passenger Vehicle must have either:

3.03.1 Chains on all drive tires; or

3.03.2 Cables on all drive tires; or

3.03.3 ~~Alternative-Alternate~~ Traction Devices (ATD); or

Commented [NM14]: Changed made to be consistent with wording in HB 19-1207

3.03.4 Adequate tires, which shall mean tires with a minimum of a 3/16-inch tread depth, which are:

3.03.4.1 Snow Tires with a “mud and snow” (M+S, M&S, or M/S) rating;

3.03.4.2 Tires with an all-weather rating by the manufacturer; or

3.03.4.3 Winter Tires (mountain snowflake symbol on the side wall of the tire).

3.04 The Department recommends that Passenger Vehicles travelling on state highways carry adequate chains or cables or ATD during the months when snow could be encountered.

4.00 Passenger Vehicle Chain Law

4.01 Passenger Vehicles include but are not limited to vehicles under 16,001 GVWR and vehicles capable of transporting up to 15 passengers. Vehicles that meet these requirements include but are not limited to:

4.01.1 A vehicle towing a trailer or another vehicle;

4.01.2 Non-Commercial or Recreational Vehicles ~~or recreational buses less than 16,001 pounds GVWR;~~ and

4.01.3 Passenger vans (up to 15 passengers).

4.01.4 A Passenger Vehicle can be a two-wheel drive vehicle, an all-wheel drive vehicle or a four-wheel drive vehicle.

Commented [NM15]: Added to be consistent with the language under Rule 3.00 that specify what vehicles fall under the category of passenger vehicles

4.02 The Passenger Vehicle Chain Law applies to Non-Commercial or Recreational Motor Vehicles under 16,001 pounds GVWR.

4.03 To travel on a state highway when the Passenger Vehicle Chain Law is in effect, a Passenger Vehicle must have either:

4.03.1 Chains on all drive tires; ~~or~~

4.03.2 Tire Cables on all drive tires; ~~or~~

4.03.3 ATDs; or

4.03.4 Winter tires (mountain snowflake symbol on the side wall of the tire) with a minimum of a 3/16-inch tread depth on a four-wheel drive or all-wheel drive vehicle.

5.00 Commercial Motor Vehicle Chain Law

5.01 A Commercial Motor Vehicle for purposes of these rules is any vehicle 16,001 pounds GVWR or more and used in commerce on public highways or ~~and includes~~ vehicles 16,001 pounds GVWR or more ~~with and has~~ the capacity to carry 16 or more passengers.

5.01.1 Non-Commercial or Recreational Vehicles 16,001 pounds GVWR or more shall comply with the provisions of the Commercial Motor Vehicle Chain Law when in effect.

5.02 To travel on a state highway when the Commercial Motor Vehicle Chain Law is in effect, a Commercial Motor Vehicle or Non-Commercial or Recreational Vehicle must have chains or ATDs on at least four of the drive wheel tires, or all of the drive wheel tires if the vehicle has fewer than four drive wheel tires. Buses are required to chain or have ATDs on two drive wheel tires. See § 42-4-106(5)(a)(I), C.R.S.

5.03 Commercial Motor Vehicles hauling flammable, combustible or explosive materials as defined by federal regulations may continue beyond the Variable Message Sign until they encounter snow on the road. The driver shall affix chains at the earliest possible time where the traction of the vehicle is compromised (where the pavement is primarily covered by snow or ice) at a safe location outside the travelled portion of the highway.

5.04 The Commercial Motor Vehicle or Non-Commercial or Recreational Vehicles may proceed beyond the chain area to the next safe location in the event the chain station is full in order to safely affix or remove chains.

5.05 Passing Requirements when the Commercial Motor Vehicle Chain Law is in Effect. Whenever the Commercial Motor Vehicle Chain Law is in effect, Commercial Motor Vehicles or Non-Commercial or Recreational Vehicles shall be restricted to the right lane unless encountering a stalled or slower moving vehicle that would result in the loss of traction, in which case the CMV or Non-Commercial or Recreational Vehicles may utilize the left or center lane to pass if the movement can be made with safety and without interfering with other traffic. However, the pass must be completed without losing

Commented [NM16]: Change made for consistency in the use of semi colons

Commented [NM17]: This was added as another method by which passenger vehicles could travel on state highways when passenger vehicle chain law is in effect

Commented [NM18]: Added for consistency

Commented [NM19]: These changes were made for consistency with the definition in 1.06

Commented [NM20]: Change made for consistency

Commented [NM21]: Change made for consistency

Commented [NM22]: Change made to fix typo

Commented [NM23]: Added for consistency

traction and the CMV ~~or Non-Commercial or Recreational Vehicles~~ must return immediately to the right lane upon completion of the pass.

Commented [NM24]: Added for consistency

5.06 Autotransport Carriers

5.06.1 Autotransport Carriers shall be exempt from using tire chains on ~~at least~~ four drive wheels in the event the tire chains would jeopardize the safety of the hydraulic lines of the vehicle.

Commented [NM25]: Changed for clarification since some autotransport carriers have more than 4 wheels

5.06.2 To the extent tire chains do not interfere with the hydraulic lines, Autotransport Carriers shall be subject to these rules.

5.06.3 When the Commercial Motor Vehicle Chain Law has been implemented and Autotransport Carriers cannot use tire chains ~~on at least four drive wheels~~, the use of pneumatically driven chains, drive wheel sanders or ATDs, or use of winter tires ~~(mountain snowflake symbol on the side wall of the tire) with the snowflake symbol with a minimum of a 3/16-inch tread depth~~ shall be required.

Commented [NM26]: Change made for clarification

~~5.07 Authorized Service Vehicles and Authorized Emergency Vehicles~~

~~5.07.1 Government Owned Highway Maintenance Vehicles. Government owned highway maintenance vehicles, in the exercise of highway maintenance activities, or incident management, shall be exempt from the travel requirements in these rules.~~

~~5.07.2 Vehicle Recovery Units. Vehicle recovery units that are in the exercise of clearing travel lanes in a chain law enforcement area shall be exempt from these rules.~~

~~5.07.3 Authorized Emergency Vehicles shall be exempt from these rules.~~

Commented [NM27]: Moved below as new Rule 8.00 and its subparts

6.00 Tire Chains, Tire Cables and Approved ~~Alternative-Alternate~~ Traction Devices

Commented [NM28]: Change made for consistency with HB 19-1207

6.01 Under certain road conditions, chains, tire cables or ATDs may be required. With regard to Passenger Vehicles, the required use of these traction devices may depend on the type and quality of tire on the Passenger Vehicle.

6.02 Tire Chains. Tire Chains include but are not limited to metal chains which consist of two circular hoops, one on each side of the tire, connected by not less than nine evenly spaced chains across the tire tread. See § 42-4-106(5)(a)(I), C.R.S. Tire chains shall meet the SAE classification as outlined in NACM 92805 (TC) by the National Association of Chain Manufacturers.

6.03 Clip on chains are not permitted, nor is any other device not designated as an approved ATD.

6.04 Tire Cables. Tire cables are traction devices made of steel cable as opposed to steel chain link, which have high strength steel cross member rollers 0.415" or greater in diameter, which may only be used on passenger vehicles.

6.04.1 Tire Cables on Commercial Motor Vehicles are not permitted.

6.05 ~~Alternative/Alternate~~ Traction Devices must be one of the ATD included in the CDOT Approved Product List ("APL"). Drive wheel sanders and pneumatically driven chains are also allowed.

Commented [NM29]: Change made for consistency with HB 19-1207

7.00 Truck Chain Up, Truck Chain Down and Inspection Stations

7.01 The Department shall designate the locations of chain inspection stations.

7.02 The Department may designate Authorized Service Vehicles to sell, mount, and assist in mounting chains in compliance with these rules at certain chain-up stations.

7.03 The Department or law enforcement personnel may control the reentry of vehicles from the chain station or inspection station to the state highway in such a manner as to enhance the flow of traffic and assure the safety of the travelling public.

7.04 All vehicles subject to the Passenger Vehicle Traction and/or Chain law applicable at the time may be subject to inspection by Department personnel or appropriate law enforcement personnel for compliance with the chain law or ~~Passenger Vehicle Traction Law~~ before proceeding on the state highway.

Commented [NM30]: Change made for consistency

7.05 Passenger vehicles shall chain up at safe locations in rest areas or locations with public access off the main line of traffic. It is recommended that Passenger Vehicles not affix chains in designated Commercial Motor Vehicle chain up areas.

7.06 If any vehicle is not in compliance, law enforcement or Department personnel may:

7.06.1 Hold the vehicle in the inspection or chain area;

7.06.2 Require the driver of the vehicle to reverse its direction of travel or stop travel; or

7.06.3 Be required to retain a private towing service to convey the vehicle through the area covered by the chain law implementation.

8.00 Authorized Service Vehicles and Authorized Emergency Vehicles

8.01 Government Owned Highway Maintenance Vehicles. Government-owned highway maintenance vehicles, in the exercise of highway maintenance activities, or incident management, are exempt from the travel restrictions in these rules.

Commented [NM31]: Changed from "shall be exempt" to "are exempt"

Commented [NM32]: Changed from "requirements" to "restrictions" for clarification

8.02 Vehicle Recovery Units. Vehicle recovery units that are in the exercise of clearing travel lanes in a chain law enforcement area shall be exempt from these rules.

8.03 Authorized Emergency Vehicles shall be exempt from these rules.

Commented [NM33]: Moved from Rule 5.07 above

98.00 Penalties

Commented [NM34]: Renumbered this and subsequent rules

98.01 Persons operating motor vehicles on any portion of the State Highway System that has the Chain Law and/or Passenger Vehicle Traction Law in effect must comply with these rules.

98.02 A person who operates a motor vehicle in violation of these rules or in violation of restrictions imposed by the Department or the State Patrol shall be subject to fines set forth in § 42-4-1701, C.R.S.

98.03 An enhanced penalty will be assessed as set forth in § 42-4-1701(4)(a)(I)(F), C.R.S., if the person violates these rules while operating a Commercial Motor Vehicle or where the violation causes a closure of a travel lane in one or both directions.

98.04 § 42-4-1701(4)(a)(I)(F), C.R.S., regarding enhanced penalties shall not apply to a tow operator who is towing a motor vehicle or traveling to a site from which a motor vehicle is to be towed.

109.00 Declaratory Orders

109.01 The Department may entertain, at its sound discretion, petitions for declaratory orders pursuant to § 24-4-105(11), C.R.S.

119.00 Incorporation by Reference

119.01 All referenced laws and regulations shall be available for copying for a reasonable charge or for public inspection during regular business hours from the Office of Policy and Government Relations, Colorado Department of Transportation, 2829 W. Howard Place, Denver, Colorado 80204.

119.02 The following material is incorporated by reference into these rules. Tire Chain Specifications NACM 92805 (TC), adopted by the National Association of Chain Manufacturers on September 25, 2005, and reaffirmed without change on April 12, 2015. Copies of NACM 92805 (TC) may be obtained by contacting The National Association of Chain Manufacturers by phone at (248) 994-2222, or by writing to them at the following address:

The National Association of Chain Manufacturers
28175 Haggerty Road
Novi, MI 48377



DATE: May 30, 2019

TO: Transportation Commission of Colorado

FROM: Andrew Hogle, Administrative Hearing Officer

SUBJECT: Administrative Hearing Officer Summary Re: Rulemaking Hearing on Proposed Changes to 2 CCR 601-14, "Rules Regarding Travel Restrictions on State Highways"

Background

Pursuant to § 42-4-106(5)(b), C.R.S., the Transportation Commission of Colorado has the authority to adopt and promulgate the Rules Regarding Travel Restrictions on State Highways. On February 21, 2019, the Transportation Commission, by Resolution No. TC-19-02-14, authorized an Administrative Hearing Officer to conduct a hearing on proposed changes to the rules (Exhibit 1B). On May 6, 2019, the Hearing Officer held a rulemaking hearing to receive public comment on the proposed rule changes.

Summary of Hearing and Factual Findings

Pursuant to § 24-4-103, C.R.S., the State Administrative Procedure Act, and the Transportation Commission Resolution No. TC-19-02-14, a public hearing was held on May 6, 2019, in the auditorium at the CDOT Headquarters building at 2829 W. Howard Place, in Denver, Colorado. A court reporter was present, and a transcript of this hearing is attached. Acting as your delegated Administrative Hearing Officer, I opened the hearing at 2:16 p.m. Department personnel and the Office of the Attorney General attended the hearing, and members from the public were present. Testimony was offered from two members of the public in addition to the testimony from Department personnel and the Office of the Attorney General.

First, Marie Nakagawa from CDOT's Office of Policy and Government Relations reviewed the exhibits and demonstrated how CDOT complied with the requirements of the State Administrative Procedure Act (Transcript pages 6-12). The Statement of Basis, Purpose, and Statutory Authority for the rules is contained in Exhibit 6A. A cost-benefit analysis was not required (Exhibit 3C). Ms. Nakagawa also noted that CDOT:

- Obtained proper hearing delegation from the Transportation Commission (Exhibit 1B);
- Filed a timely Notice of Rulemaking with the Secretary of State (Exhibit 2A);
- Published the Notice in the Colorado Register (Exhibit 2B);
- Posted information about the rulemaking hearing on its website on March 19, 2019 (Exhibit 4);
- Notified the representative group and the interested parties of the date, time and location of the hearing, and requested and received comments (Exhibits 5A-5C);
- Will maintain a permanent file of the rulemaking record (Exhibit 6B); and
- Posted timely notice of the rulemaking hearing in the lobby of the CDOT Headquarters Building (Exhibit 6C).

Regarding the draft of the proposed rules that was considered at the hearing (Exhibit 8B), Ms. Nakagawa explained the following:

- The draft of the proposed rules that were initially filed with the Colorado Secretary of State on February 28, 2019, showed no redlined changes because the proposed rules were completely rewritten (Exhibit 8A). This draft was also provided to the Transportation Commission at the February 21, 2019 meeting when CDOT asked for approval to commence rulemaking;
- Exhibit 8B shows in redline the changes that were made to the draft in Exhibit 8A based on comments received from the representative group and interested parties during the public comment period. This draft of the proposed rules was considered at the May 6, 2019 hearing; and
- Exhibit 8C is the clean copy of the same version of the proposed rules in Exhibit 8B.

Ms. Nakagawa also noted that CDOT is proposing the title of these rules be changed to “Rules Governing Chain Law and Passenger Vehicle Traction Law Requirements on the State Highway System” to reflect the proposed change from the use of codes to categories of Passenger Vehicle Traction Law, Passenger Vehicle Chain Law, and Commercial Motor Vehicle Chain Law.

Next, Mary Frances Nevans, CDOT Rules Administrator, provided a brief overview of the major changes to the rules and the reasons why CDOT is proposing them, referencing Exhibit 8B (Transcript pages 12-15). Ms. Nevans explained that in 2017, the Colorado State Patrol, local enforcement, and industry met with CDOT to suggest that these rules be revised, primarily because the code system that CDOT has used for years was sometimes confusing for the traveling public to understand. Over the years, CDOT worked to improve the communication of travel restrictions using variable message signs, social media, and other tools. Based on this input, CDOT worked with the Colorado Motor Carriers Association, the Colorado Wyoming Petroleum Marketers Association, Colorado State Patrol, the Port of Entry, and members of the I-70 Coalition to analyze the provisions in the rules. Ms. Nevans explained that the goal was to make the rules easier for the traveling public to understand, including those members of the public from out of state who may not know how quickly the weather can change in Colorado.

Referring to Exhibit 8B, Ms. Nevans explained that the following are the main changes being proposed:

- Codes 15 through 18 are eliminated, and are being replaced with categories Passenger Vehicle Traction Law, Passenger Vehicle Chain Law, and Commercial Motor Vehicle Chain Law;
- Under Rule 6.02, the specification for tire chains from the National Association of Chain Manufacturers was incorporated by reference;
- The weight for commercial motor vehicles has changed to 16,001 pounds gross vehicle weight rating (“GVWR”) to be consistent with statute;
- The minimum tire tread depth was changed to 3/16 of an inch from 1/8 inch, which is similar to laws in other states and conforms with HB 19-1207;
- There is a new definition for Non-Commercial or Recreational Vehicles to address how travel restrictions apply to recreational vehicles (RVs) depending on their weight; and
- A statutory provision was added to provide the public an opportunity to petition for a declaratory order.

After Ms. Nevans' testimony, Patrick Chavez, the Statewide Traffic Center Operations Manager in CDOT's Division of Maintenance Operations, reviewed the key proposed changes (Transcript pages 16-20). He explained that the rules were last updated in 2012, and noted which of the proposed changes are based on HB 19-1207 (Exhibit 7), as indicated below (HB 19-1207 was signed by the Governor on May 17, 2019). Referring to Exhibit 8B, Mr. Chavez explained the substantive changes, which include the following:

- Rule 1.01 set the process for the approval of an Alternate Traction Device (ATD) in Colorado. The term was changed from “Alternative Traction Device” to “Alternate Traction Device” to be consistent with HB 19-1207. The approval process for an ATD has been changed from obtaining approval from the Chief Engineer to including the ATD in the CDOT Approved Product List process. This will increase transparency in the approval process and make information about approved ATDs more accessible to the traveling public;
- The minimum tread depth of tires has been changed from 1/8 of an inch to 3/16 of an inch which conforms to HB 19-1207;
- Rule 1.06 is the definition of Commercial Motor Vehicle, and has been changed to be consistent with § 42-4-235(1)(a), C.R.S., with the significant change being the weight of a commercial motor vehicle is now 16,001 pounds or more GVWR instead of at least 26,001 pounds; and
- The definition of “Non-Commercial or Recreational Vehicle” was added under Rule 1.11 to address how travel restrictions apply to recreational vehicles. Travel restrictions now apply to RVs according to weight of the RVs. RVs weighing less than 16,001 pounds GVWR must comply with Passenger Vehicle Traction Law and Passenger Vehicle Chain Law requirements when they are in effect. RVs weighing 16,001 pounds or more must comply with requirements for Commercial Motor Vehicle Chain Law when they are in effect. Although the prior rules applied to RVs, it was not stated clearly in the rules which codes applied to an RV and under what conditions, and these proposed changes should now provide clear requirements on what travel restrictions apply.

Next, Mr. Chavez noted the following proposed changes were made based on comments from stakeholders after February 28, 2019. These changes are shown in redline in Exhibit 8B:

- The definition of “chain law” in Rule 1.04 was amended to refer to both adverse road and weather conditions, which is consistent with Rule 2.02;
- Rule 1.11 was amended with a sentence to clarify that Non-Commercial or Recreational Vehicle is categorized by weight as either a Commercial Motor Vehicle or a Passenger Vehicle;
- Rule 1.14 was amended to clarify that the traction law refers to Passenger Vehicles, and also clarified that the Department may implement passenger vehicle traction law based on adverse road and weather conditions;
- The reference to “snowmobile, camper, or ATV” in Rule 3.01.1 was deleted and replaced with “another vehicle”;
- The references to recreational buses and to transporting 15 passengers or less in Rule 3.01.2 were deleted. This aligns with the definition of Non-Commercial or Recreational vehicles which is under Rule 1.11;
- Rule 4.01 regarding Passenger Vehicle Chain Law was amended to include the same language stating which vehicles are treated as Passenger Vehicles, for consistency with Rule 3.01 regarding Passenger Vehicle Traction Law;
- Rule 4.03.4 was added to include “winter tires on a four-wheel drive or all-wheel drive vehicle” as one of the conditions that will satisfy requirements when Passenger Vehicle Chain Law is in effect. Mr. Chavez explained that winter tires are marked with the mountain-snowflake symbol embossed on the side of the tire. The use of winter tires on a four-wheel drive or all-wheel drive vehicle provides increased traction capability comparable to chains, cables, and ATDs, which provides an additional option for the traveling public when Passenger Vehicle Chain Law is in effect without compromising safety on the highway;

- Rule 5.01 was amended for consistency with the definition of Commercial Motor Vehicles under Rule 1.06;
- Rule 5.05 was amended to consistently refer to both Commercial Motor Vehicles and Non-Commercial or Recreational vehicles;
- Rules 5.06.1 and 5.06.3 were amended to clarify autotransport carriers must have chains on least four drive wheels;
- Rule 5.07 was moved to become new Rule 8.00 for better organizational structure; and
- The wording in Rule 8.01 was changed from “travel requirements” to “travel restrictions” for clarification.

After Mr. Chavez finished his testimony, I asked the two members of the public who requested to speak at the hearing to state their testimony for the record. The two members were Mr. Steve Topalian from Enterprise Holdings (Transcript hearing 21-24), and Mr. Greg Fulton, the President of the Colorado Motor Carriers Association (CMCA) (Transcript hearing (24-29).

Mr. Topalian explained that Enterprise Holdings, which is the parent company for Enterprise Rent-A-Car, National Car Rental, and Alamo Rental Car, has concerns about their ability to comply with the minimum tire tread depth requirements in a timely manner. He said the rental car industry has approximately 50,000 rental cars in the state. Speaking on behalf of Enterprise Holdings, he said that as soon as his company heard about the tire tread depth change in HB 19-1207, the company reached out to suppliers and manufacturers of tires and ATDs and found there is a concern about how quickly their cars can be equipped to meet the new minimum tread depth requirements. Mr. Topalian also noted that safety is a priority and Enterprise Holdings will be giving their rental car customers information about the travel restrictions in order to help educate the public.

Mr. Fulton expressed CMCA’s support for the proposed rules and HB 19-1207, and said CMCA worked closely with CDOT, Colorado State Patrol, and other stakeholders regarding both the rules and the bill. He said the changes will make it safer for the traveling public because the requirements are clearer about what Passenger Vehicles need to have when traveling on I-70 and other corridors. In particular, he said CMCA supports the following improvements to the rules:

- The proposed rules better define what has been approved as an ATD;
- That requirements for recreational vehicles are clearly explained;
- The minimum tire tread depth change to 3/16 of an inch;
- The reference to specific tire markings designating the tire types assists the travelling public; and
- The clarification is important regarding the use of different ATDs and the continued reference in the Rules to pneumatically driven chains and drive wheel sanders.

Regarding Mr. Topalian’s concern about compliance with new requirements, Mr. Fulton agreed that everyone will need a little time to adjust to the requirements from HB 19-1207. Mr. Fulton said although it is not something that can be a part of the proposed rules, how to manage compliance is a matter that can be considered by CDOT, Colorado State Patrol, and law enforcement.

Finally, Kathy Young, First Assistant Attorney General from the Office of the Attorney General, was present at the hearing and testified that the process the Department followed in this rulemaking met the requirements of the State Administrative Procedure Act (Transcript pages 30-31).

Findings and Conclusions of Law

I have reviewed the entire record of this proceeding. The record includes all 9 exhibits from the May 6, 2019 hearing. I find that:

1. All requirements of the State Administrative Procedure Act, § 24-4-103, C.R.S., have been satisfied.
2. There is sufficient evidence in the record to support the proposed changes to the rules as submitted in the attached copy of the proposed rules.
3. The Commission has the authority to adopt the proposed rules.

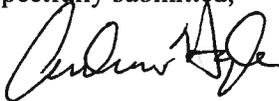
Decision

You must review the record of these proceedings prior to adopting any rule, and any action must be based upon, and supported by, the record. Copies of the entire exhibit packet are available for your review in the Office of Policy and Government Relations. The record supports adoption of the proposed rule changes, and pursuant to § 24-4-103, C.R.S., you may choose to adopt these rule changes.

Having reviewed the entire record of this proceeding, including Exhibits 1 through 9 and having heard oral testimony, and being fully apprised of this matter, acting as Administrative Hearing Officer in this matter, I recommend that the Transportation Commission adopt the proposed rules.

I have prepared a resolution for adoption of the proposed rules.

Respectfully submitted,



Andrew Hogle
CDOT Administrative Hearing Officer

cc: Shoshana M. Lew, CDOT Executive Director
Herman Stockinger, Transportation Commission Secretary