

DEPARTMENT OF TRANSPORTATION

Executive Director

RULES GOVERNING THE SUSPENSION OR REVOCATION OF PERMITS ~~OF FOR THE~~ TRANSPORTATION OF HAZARDOUS AND NUCLEAR MATERIALS BY MOTOR VEHICLE

2 CCR 601-25

Please note the following formatting key:

Font effect	Meaning
<u>Underline</u>	Proposed new language that amends the Emergency Rules being considered for permanent adoption
Strikethrough	Proposed deletions that amend the Emergency Rules being considered for permanent adoption
Blue Font Text	Emergency Rules being considered for permanent adoption

Modifications after the rulemaking hearing are **highlighted in yellow**.

Chapter 1: Statutory Basis, Purpose, and Authority

1.1. Statutory Basis and Purpose

Senate Bill 20-118 was enacted into law transferring the function of issuing permits for the transportation of hazardous and nuclear materials by motor vehicle from the Public Utilities Commission to the Colorado Department of Transportation. The purpose of these Rules is to establish the specific procedures for the suspension or revocation of Permits pursuant to sections 24-4-104 and 24-4-105, C.R.S.

1.2. Statutory Authority

The specific authority ~~under which~~for the Executive Director of the Colorado Department of Transportation (“the Department”) to establish these Rules is set forth in sections 43-1-105(6) and 42-20-205, C.R.S.

Chapter 2: Definitions

2.1. Department: The Department of Transportation has the same meaning as defined pursuant to section 43-1-103, C.R.S.

2.2. State Patrol Chief Rules: The Rules and Regulations concerning the Permitting, Routing & Transportation of Hazardous and Nuclear Materials and the Intrastate **of** Transportation of Agricultural Products in the state of Colorado as set forth in 8 CCR 1507-25.

2.3. Hazardous Materials Carrier: ~~Means~~means a motor carrier that transports hazardous materials as defined in section 42-20-103(3), C.R.S. and is subject to the permitting requirements of the Department, as set forth in section 42-20-201, C.R.S., et seq.

- 2.4. Nuclear Materials Carrier: ~~Means means~~ a motor carrier that transports nuclear materials as defined in section 42-20-402(3), C.R.S and subject to permitting requirements through the Department as set forth in section 42-20-501, C.R.S., et seq.
- 2.5. Permit: ~~Means means~~ a Permit issued by the Department to a Hazardous Materials Carrier pursuant to section 42-20-201, C.R.S., et. seq. or to a Nuclear Materials Carrier pursuant to 42-20-501, C.R.S., et. seq.

Chapter 3: Suspension or Revocation of Permits

3.1. Track and Monitor Permit Violations

The Department will track and monitor violations and civil penalties reported to the Department by the Colorado State Patrol, including data reported to the Department that establish patterns of noncompliance.

3.2. Grounds for Suspension and Revocation of a Permit

A. Hazardous Materials Carriers

Pursuant to section 42-20-205, C.R.S., the Department may suspend or revoke a Permit of a Hazardous Materials Carrier for the following reasons:

1. Lack of financial responsibility or failure to maintain liability insurance pursuant to sections 42-20-202(2)(a) and (3)(a), C.R.S. and as set forth in the State Patrol Chief Rules;
2. Failure to comply with the terms and conditions of the Permit pursuant to section 42-20-204(3), C.R.S. and as set forth in the State Patrol Chief Rules;
3. Failure to pay a civil penalty assessed pursuant to section 42-20-204, C.R.S.; or
4. Continued violations of the State Patrol Chief Rules and these Rules.

B. Nuclear Materials Carriers

Pursuant to section 42-20-506, C.R.S., the Department may suspend or revoke a Permit of a Nuclear Materials Carrier for the following reasons:

1. Failure to comply with the terms and conditions of the Permit;
2. Misrepresentation of information in the Permit application;
3. Failure to pay a civil penalty assessed pursuant to section 42-20-406, C.R.S.; or
4. Failure to comply with the State Patrol Chief Rules and these Rules.

3.3. Automatic and Immediate Revocation of a Permit of a Hazardous Materials Carrier for Lack of Financial Responsibility or Failure to Maintain Insurance Coverage

- A. Whenever the Department's records indicate that a Hazardous Materials Carrier's liability insurance or surety bond coverage is canceled and the Department has no proof on file indicating replacement coverage as set forth in subparagraph A.1. of Rule 3.2., the Permit is automatically revoked pursuant to section 42-20-202(2)(a), C.R.S.

- B. The Department will automatically notify the Hazardous Materials Carrier that:
1. The Department is in receipt of the insurance or surety cancellation and the effective date of the cancellation; and
 2. The Hazardous Materials Carrier will not conduct operations under any of its Permits after the coverage cancellation date; ~~and~~
 - ~~3. Any action taken pursuant to this Rule is in addition to and not in lieu of any other civil penalty, sanction, or disqualification authorized by law.~~
- ~~C. Upon proof of coverage, the Permit may be reinstated.~~

3.4. Suspension and Revocation of a Permit

- A. Pursuant to section 24-4-104, C.R.S., the Department will notify the Hazardous Materials Carrier or Nuclear Materials Carrier in writing of the objective facts or conduct that may warrant the suspension or revocation as set forth in Rule 3.2, and afforded the Hazardous Materials Carrier or Nuclear Materials Carrier opportunity to submit written data, views, and arguments with respect to the facts or conduct, and give the Hazardous Materials Carrier or Nuclear Materials Carrier a reasonable opportunity to comply with all lawful requirements.
- B. Pursuant to section 24-4-104(10), C.R.S., written notice of the suspension or revocation of a Permit and the grounds for such action will be served promptly on the Hazardous Materials Carrier or Nuclear Materials Carrier personally or by mailing by first class to the last address furnished to the Department by the Hazardous Materials Carrier or Nuclear Materials Carrier. The notice will be sent on the same day via email-an electronic notification to the Hazardous Materials Carrier's or Nuclear Materials Carrier's last known email address.
- C. If requested by the Hazardous Materials Carrier or Nuclear Materials Carrier, the Department will hold a hearing as set forth in Chapter 4 of these Rules for the suspension or revocation of a Permit.

3.5. Summary Suspension for Endangering Public Health, Safety and Welfare

- A. The Department may summarily suspend a Permit pursuant to section 24-4-104(4), C.R.S.
- B. When the Department has objective and reasonable grounds to believe that a Hazardous Materials Carrier or Nuclear Materials Carrier has willfully and deliberately violated these Rules, the State Patrol Chief Rules, or any applicable statutes, based on a reasonable ascertainment of the underlying facts on which this action is based, or that the public health, safety, or welfare imperatively requires emergency action, the Department may issue a letter incorporating such findings that summarily suspends the Permit.
- C. "Willful and deliberate," for purposes of this Rule, means a deliberate, voluntary, or intentional action or inaction that is in violation of the applicable rules, statutes, or any other lawful order. Willful and deliberate acts include: the same or similar action for which a person has already been warned; reckless or dangerous action; action done without regard to the consequences or the rights or safety of others; fraudulent action; conduct without the proper authority or engaging another person who performs without the proper authority.

- D. The letter of summary suspension by the Department and the notice of hearing will be served on the Hazardous Materials Carrier or Nuclear Materials Carrier along with supporting information.
- E. ~~A hearing officer as designated by the~~The Executive Director ~~or Executive Director's designee~~ pursuant to section 43-1-106, C.R.S. or an Administrative Law Judge ~~(ALJ)~~ will promptly hold a hearing no later than ten (10) days after the Department's letter of summary suspension was served on the Hazardous Materials Carrier or Nuclear Materials Carrier. ~~The hearing officer or ALJ will expedite the~~The issuance of the decision or initial decision will be expedited after hearing.

Chapter 4: Hearings and Appeals regarding the Suspension or Revocation of a Permit

- 4.1. All hearings and appeals, which are required by law regarding the suspension or revocation of a ~~permit~~ Permit, will be requested, provided, and conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.
- 4.2. Any hearing required by these Rules will be presided over by ~~a hearing officer as designated by~~ the Executive Director ~~or Executive Director's designee~~ pursuant to section 43-1-106, C.R.S. or by an Administrative Law Judge appointed pursuant to Part 10 of Article 30 of Title 24, C.R.S. If a hearing is held before an Administrative Law Judge and if either party wishes to reverse or modify the initial decision of the Administrative Law Judge, then an appeal may be made to the Executive Director, or Executive Director's designee, pursuant to ~~§sections~~ 24-4-105 (14) and (15), C.R.S., within thirty (30) days after the date of service of the initial decision. The appeal must comply with the requirements of section 24-4-105, C.R.S. All appeals must be submitted to the Department. The address of the Department is:

Colorado Department of Transportation:
CDOT Headquarters
Attn: Freight Office
2829 W. Howard Pl.
Denver, CO 80204

Chapter 5: Declaratory Orders

- 5.1. Pursuant to section 24-4-105(11), C.R.S., the Department may entertain, in its sole discretion, petitions for declaratory orders concerning the suspension and revocation of Permits.