

STATE OF COLORADO
DEPARTMENT OF TRANSPORTATION
4201 East Arkansas Avenue
Denver, Colorado 80222

TRANSCRIPT OF PUBLIC MEETING
Proposed Rules 2 CCR 601-11
Rules Governing Practice and Procedure of the
Transportation Commission of Colorado
Held on September 12, 2016

REPORTER'S TRANSCRIPT

The above-entitled public meeting was held at 4201 East Arkansas Avenue, Denver, Colorado, in the Auditorium, on Monday, September 12, 2016, at 1:01 p.m., before Teresa Hart, Registered Professional Reporter and Notary Public.

1 ATTENDEES:
 2 Hearing Officer, Christine Rees
 3 Mary Frances Nevans, Esq.
 4 Andy Frohardt, Assistant Attorney General
 5 Marie Nakagawa
 6 Zachary Alexander
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1 are available in the back of the room. A sign-in sheet
 2 is also available in the back of the room. We ask
 3 everyone to sign in to indicate who attended this
 4 hearing. So if you haven't signed in, please take that
 5 opportunity.

6 In addition, on the sign-in sheet there
 7 is a column in which you may check whether or not you
 8 wish to speak on the record today. I encourage anyone
 9 who has anything to offer to come forward and speak
 10 when you have that opportunity. I will be calling on
 11 those who wish to testify based on the order in which
 12 you signed the attendance sheet.

13 The procedure we'll follow this afternoon
 14 is relatively informal. I will allow everyone an
 15 opportunity to speak who wishes to do so. This hearing
 16 is limited only to the rules identified in the notice
 17 of rulemaking that was published in the Colorado
 18 Register. The notice is part of that packet today.
 19 Please limit all comments to these rules only.

20 First, Department staff will give a
 21 presentation on the rules at issue today. Staff will
 22 describe the reason why the Department is recommending
 23 amendment to these rules, and will review and submit
 24 exhibits.

25 We will have time for those who wish to

1 PROCEEDINGS

2 * * * * *

3 HEARING OFFICER REES: Good afternoon. I
 4 will now call the hearing to order. This is a
 5 rulemaking proceeding pursuant to the Colorado Revised
 6 Statute 24-4-103(4)(a) of the State Administrative
 7 Procedure Act concerning revisions to the rules
 8 governing practice and procedure of the Transportation
 9 Commission of Colorado.

10 Section 43-1-106(6) and Section
 11 43-1-106(8)(k) C.R.S authorizes the Transportation
 12 Commission to promulgate these rules.

13 Today is September 12th. It is now
 14 1:03 p.m. This hearing is being conducted at the
 15 Colorado Department of Transportation, 4201 East
 16 Arkansas Avenue, in the auditorium, Denver, Colorado.

17 My name is Christine Rees. I am an
 18 administrative hearing officer for the Department of
 19 Transportation, which I will refer to as the
 20 Department.

21 I am presiding at this rulemaking hearing
 22 based on a delegation of authority from the
 23 Transportation Commission dated July 21st, 2016, which
 24 is included in the exhibits as Exhibit 1.

25 Sets of the rules we are reviewing today

1 make comments after the Department has made its
 2 presentation. Testimony will be considered as part of
 3 the record of this proceeding. Then I will call on
 4 anyone who noted on the sign-in sheet that you wish to
 5 speak.

6 You can also submit a written statement
 7 if you do not wish to speak. If your written
 8 submission has not already been provided to the
 9 Department of Transportation, you may do so today.
 10 Does anyone wish to submit a written presentation at
 11 this time?

12 I will then invite a representative of
 13 the attorney general's office to make any statements
 14 concerning the rules or procedures, after which I will
 15 make a finding as to whether or not the rulemaking
 16 procedure, including the hearing, was conducted in
 17 compliance with the State Administrative Procedure Act.

18 At the conclusion of the hearing today,
 19 the period for testimony will be closed. I will
 20 prepare a record for the consideration of the
 21 Transportation Commission. It will include all of the
 22 exhibits and all of the testimony, both written and
 23 oral, that were provided today. The Transportation
 24 Commission will consider all information when it makes
 25 its decision on whether or not to adopt the rules.

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1 Are there any questions before I ask the
 2 Department staff members to present? Will the
 3 Department of Transportation like to begin? Please
 4 state your name and your position for the record.
 5 MS. NAKAGAWA: Thank you, Madam Hearing
 6 Officer. I'm Marie Nakagawa from the Office of Policy
 7 and Government Relations. Today is September 12th,
 8 2016.
 9 The notice of rulemaking was filed with
 10 the Colorado Secretary of State on July 28, 2016, and
 11 was published in the Colorado Register on August 10th,
 12 2016, meeting the requirement that the hearing be held
 13 no earlier than August 30th, 2016.
 14 I would now like to review the exhibits
 15 in order to establish that the Department of
 16 Transportation met all of the requirements of the State
 17 Administrative Procedure Act.
 18 If members of the audience would like to
 19 review the exhibits, a copy is available on the back
 20 table. Additionally, we can make a copy of any
 21 document for those in the audience.
 22 If Madam Hearing Officer finds that the
 23 Department fully complied with the Administrative
 24 Procedure Act and you find sufficient grounds exist to
 25 amend the permanent rules, the request to approve the

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1 updated rules will be provided to the Transportation
 2 Commission for final approval and adoption.
 3 To review the exhibits: Exhibit 1A is a
 4 memo to the Transportation Commission dated July 21,
 5 2016, requesting that the commission open rulemaking
 6 and delegate authority to an administrative hearing
 7 officer to conduct this rulemaking hearing.
 8 Exhibit 1B is Resolution No. 16-7-9,
 9 opening the rules and delegating authority to an
 10 administrative hearing officer.
 11 Exhibit 2 contains the exhibits
 12 demonstrating compliance with the State Administrative
 13 Procedure Act regarding the filing of the rules with
 14 the Colorado Secretary of State.
 15 Exhibit 2A is the notice of rulemaking
 16 confirmation, establishing that the Department filed
 17 the rules with the Colorado Secretary of State's office
 18 on July 28th, 2016.
 19 The notice contains the hearing date,
 20 time, and location as required by Section
 21 24-4-103(3)(a) of the Colorado Revised Statutes, and
 22 has been continuously published on the Secretary of
 23 State's website since that date.
 24 Exhibit 2B is the set of rules filed with
 25 the Colorado secretary of state to open rulemaking.

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1 Exhibit 2C consists of two pages, and is
 2 the printout from the Colorado Register dated
 3 August 10th, 2016, establishing that the notice of
 4 rulemaking hearing was published in Volume 39, No. 15.
 5 Exhibit 3 contains the exhibits
 6 demonstrating compliance with the State Administrative
 7 Procedure Act regarding the filing of the rules with
 8 the Department of Regulatory Agencies, known as DORA.
 9 They include Exhibit 3A, dated July 28th,
 10 2016, showing that the Department filed the rules with
 11 DORA on July 28th, 2016.
 12 Exhibit 3B, dated July 28th, 2016, is the
 13 confirmation of the publication of today's hearing date
 14 and contains all the information published on DORA's
 15 website.
 16 Exhibit 3C, dated July 29th, 2016, is the
 17 e-mail from DORA to all members of the public who have
 18 requested to be notified of rulemaking regarding
 19 transportation rules, and providing them an opportunity
 20 to request a cost benefit analysis.
 21 Exhibit 3D, dated August 19th, 2016, is
 22 an e-mail confirmation from DORA that no cost benefit
 23 analysis is necessary for these rules.
 24 Exhibit 4 is a printout from the CDOT
 25 website establishing that the Department posted the

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1 notice of hearing date, time, and location on
 2 August 9th, 2016.
 3 Exhibit 5 contains outreach to the
 4 representative group members and interested parties.
 5 Exhibit 5A is a roster of the
 6 representative group members.
 7 Exhibit 5B is Ms. Nevans' e-mails to the
 8 representative group members, dated July 9th, 2016.
 9 This e-mail included as an attachment a copy of the
 10 rules marked as Exhibit 2B.
 11 Exhibit 5C constitutes the comments from
 12 the representative group, including comments from
 13 Mr. Greg Fulton, president of Colorado Motor Carriers
 14 Association; Ms. Marilen Reimer, executive director of
 15 the American Council of Engineering Companies of
 16 Colorado; Mr. Grier Bailey, executive director of the
 17 Colorado Wyoming Petroleum Marketers Association;
 18 Mr. Vincent Rogalski, the chairman of the Statewide
 19 Transportation Advisory Board; and Mr. Phillip
 20 Demosthenes.
 21 Exhibit 5D is Ms. Nevans' e-mail to the
 22 interested party members dated August 1st, 2016. This
 23 e-mail provided notice of today's hearing. This e-mail
 24 contained as an attachment a red-lined version included
 25 in the exhibit, and a clean version with all changes

1 accepted of the rules filed with the secretary of state
2 marked as Exhibit 2B.

3 Exhibit 5E is the e-mail sent by
4 Ms. Nevans on August 30th, 2016, to the interested
5 party members noting subsequent changes to the rules;
6 and included as an attachment the rules dated
7 August 23rd, 2016; as well as the comment received.

8 Exhibit 6 consists of three pages, and
9 includes Exhibit 6A, which is the Statement of Basis
10 and Purpose and statutory authority required to be made
11 part of the rulemaking record pursuant to
12 Section 24-4-103(4)(a) of the Colorado Revised
13 Statutes.

14 The draft rules and the Statement of
15 Basis and Purpose were prepared and made available in
16 the Office of Policy and Government Relations at CDOT
17 headquarters by September 2nd, 2016, in compliance with
18 the requirement to have them available for inspection
19 five days prior to today's hearing.

20 Exhibit 6B is a memo to maintain a
21 permanent rulemaking record.

22 Exhibit 6C is the notice required to be
23 posted in the lobby of CDOT at least five days prior to
24 the hearing. This notice was posted on September 2nd,
25 2016.

1 MR. ALEXANDER: Thank you. Good
2 afternoon, Madame Chair, Hearing Officer.

3 My name is Zachary Alexander. Im the
4 commission liaison in the office of Policy and
5 Government Relations.

6 The Transportation Commission rules were
7 last updated on April 14th, 2014. The proposed changes
8 to the Commission rules are primarily a result of the
9 passage of HB 16-1172, located at Exhibit 8, which
10 re-establishes the Efficiency and Accountability
11 Committee, clarified its role, and expanded its
12 membership.

13 Other proposed changes to the rules
14 include updates to conform to the Commission's current
15 practice, as well as other nonsubstantive changes.

16 I would now like to go through the
17 proposed changes to the Transportation Commission
18 rules, which are reflected in two drafts: The first
19 draft dated June 8th, 2016, which was sent by e-mail on
20 June 9th, 2016, to the representative group; and the
21 second draft dated August 23rd, 2016, which was
22 e-mailed to the interested parties, including the
23 representative group, on August 30th, 2016.

24 I will be referring to Exhibit 2B. The
25 proposed amendments include the following: On page 1,

1 Exhibit 7 is the red-lined copy of
2 2 CCR 601-11, marked August 23rd, 2016. It contains
3 the subsequent changes made to the rules as a result of
4 the comments from interested parties received after the
5 rules were initially filed with the secretary of state.

6 Exhibit 8 is a copy of House Bill
7 16-1172.

8 I would like to enter Exhibits 1 through
9 8 into the record for consideration. I would also like
10 to ask that if the Department finds any scrivener's
11 errors, it may correct them

12 HEARING OFFICER REES: Thank you.
13 Exhibits 1 through 8 have been entered into the record.

14 MS. NAKAGAWA: All of the exhibits we've
15 discussed here today have been offered into the record
16 for your consideration.

17 I would also ask that you find that all
18 the statutory requirements of the APA have been met at
19 the end of this public hearing.

20 HEARING OFFICER REES: Thank you. Is
21 there anyone else present from the Department of
22 Transportation who is here to testify today?

23 I would like to ask the audience to hold
24 any questions they have regarding the Department's
25 testimony until the end of the Department's testimony.

1 Rule 1.06, which defines "Headquarters" as the current
2 address on East Arkansas Avenue, was changed so that it
3 now says headquarter building address is provided on
4 the Colorado Department of Transportation's website.

5 On pages 2 and 3, Rule 2.06 has been
6 changed so the annual election of officers will be the
7 last order of business at the Commission's regular June
8 meeting; and the elected officers' terms will begin on
9 July 1st and expire on June 30th of the following year.

10 Rule 3.01 has been clarified to say that
11 the members of the standing committees will begin
12 serving by the July regular meeting, and that the
13 Commission will ratify these appointments by
14 resolution.

15 Also on pages 3 and 4, in Rules 3.01.1,
16 3.01.2, 3.01.3, and 3.01.4, the commission membership
17 on these standing committees have been changed so that
18 there will be at least three, but no more than five on
19 each committee.

20 In Rule 3.01.2, the name of the
21 Disadvantaged Business Enterprise Committee has been
22 changed to the Small Business and Diversity Committee.

23 Rule 3.01.5, pertaining to the Efficiency
24 and Accountability Committee, has been changed to
25 reflect the changes from HB 16-1172, which includes a

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1 new subsection with membership from the legislative
2 branch of the state government and membership from
3 outside the state government; representatives from
4 counties, municipalities, nonpartisan good governance
5 organizations; and any other individuals or
6 representatives of informally constituted groups that
7 the Commission determines should be represented on
8 committee.

9 This rule also now includes a subsection
10 from HB 16-1172 regarding a committee member's
11 disclosure of personal interests and abstention from
12 voting.

13 On page 5, Rule 5.02 was amended so the
14 schedule of regular meetings of the Commission will be
15 adopted each July for the fiscal year.

16 Rule 5.04 was amended to state that the
17 Commission would consider holding at least two of its
18 meetings in a 12-month period outside of the Denver
19 area.

20 On page 6, the rules are renumbered. On
21 page 7, the original provision of Rule 8.06 regarding
22 sign-in sheets has been moved to new Rule 7.07, which
23 is on page 6.

24 The new Rule 8.06 incorporates the
25 record-keeping provision that used to be in Rule 8.01,

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1 and clarifies that electronic recording of executive
2 sessions shall be kept for 90 days according to
3 statute.

4 Please turn to Exhibit 7. This exhibit
5 includes changes that were made after the rules were
6 filed with the secretary of state on July 28, 2016.

7 These changes consist of the following:
8 On page 3 and 4 of Exhibit 7, Rule 3.01.3 addressed the
9 Safety Committee, but the Safety Committee was removed
10 from the rules because the Safety Committee no longer
11 exists.

12 This changed the rule number of the
13 Transit and Intermodal Committee so that the rule is
14 now Rule 3.01.3 instead of 3.01.4. There is no longer
15 a Rule 3.01.4.

16 The rule number for the Efficiency and
17 Accountability Committee has been changed from Rule
18 3.01.5 to Rule 3.02. Rule 3.02 regarding ad hoc
19 committees has been renumbered to Rule 3.03.

20 On page 8 of Exhibit 7, Rule 12.01 has
21 been changed to include petitions for Declaratory
22 Orders pursuant to Section 24-4-105(11) of the Colorado
23 Revised Statutes.

24 As stated before, these changes are
25 reflected in the drafts of the proposed rules included

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1 in Exhibits 2B and 7.

2 This concludes my testimony.

3 HEARING OFFICER REES: Thank you. Is
4 there anyone else with the Department that would like
5 to testify? May I have the sign-in sheet, please. The
6 sign-in sheet doesn't indicate that anyone else wishes
7 to testify at this hearing.

8 I'm going to admit the attendance record
9 as Exhibit 9. I'll also include in the record a copy
10 of the transcript from this hearing.

11 Does anyone have any objections to the
12 exhibits that have been presented being entered into
13 the record? Does anyone have any comments to make at
14 this time?

15 I will ask the representative of the
16 attorney general's office to make any comments about
17 the rules or procedures today.

18 MR. FROHARDT: Good afternoon. My name
19 is Andy Frohardt, and I'm an assistant attorney general
20 with the attorney general's office, in the
21 transportation unit.

22 It is my opinion that the rulemaking
23 procedure carried out by the Department, including the
24 rulemaking hearing today, was held in accordance with
25 the Administrative Procedure Act.

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1 I have no further comments.

2 HEARING OFFICER REES: Thank you. If
3 there are no other comments, I'll make my findings that
4 the Transportation Commission properly delegated
5 authority to me to conduct this hearing; that the
6 Department met the requirements of the State
7 Administrative Procedure Act; and that this rulemaking
8 hearing has been conducted in conformance with the
9 State Administrative Procedure Act.

10 I find that the record does support
11 amendment of the rules governing practice and
12 procedures of the Transportation Commission of
13 Colorado.

14 I will recommend to the Transportation
15 Commission that the amendments should be adopted if it
16 so chooses. I will grant Ms. Nakagawa's request to
17 correct any scrivener's errors prior to submitting the
18 rules to the Transportation Commission for its
19 consideration.

20 And finally, I find that the public did
21 have an opportunity to comment. Is there anything else
22 to include in the hearing today? Last chance. If
23 there's nothing else, I will prepare a record for the
24 Transportation Commission.

25 The record will be available for

1 inspection by the public and kept on file with the
2 permanent rulemaking record. Any questions? The oral
3 testimony portion of the rulemaking procedure is now
4 closed. This hearing is adjourned. Thank you.

5 (WHEREUPON, the hearing was concluded at
6 1:21 p.m.)
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1 CERTIFICATE
2

3 STATE OF COLORADO)
4 COUNTY OF DENVER) ss.

5 I, Teresa Hart, a Registered Professional
6 Reporter and Notary Public for the State of Colorado,
7 do hereby certify that the above-entitled hearing was
8 taken in shorthand by me and was reduced to typewritten
9 form by computer-aided transcription; that the
10 foregoing is a true transcript of the proceedings had;
11 that I am not attorney, nor counsel, nor in any way
12 connected with any attorney or counsel for any of the
13 parties to said action or otherwise interested in its
14 event.

15 IN WITNESS WHEREOF, I have hereunto affixed my
16 hand and notarial seal this 22nd day of September,
17 2013.

18 My commission expires: January 19, 2020.
19
20

21 _____
22 TERESA HART
23 Registered Professional Reporter
24 and Notary Public
25 CALDERWOOD-MACKELPRANG, INC.