

STATE OF COLORADO

DEPARTMENT OF TRANSPORTATION
Office of Policy and Government Relations
4201 East Arkansas Avenue, Room 275
Denver, Colorado 80222
(303) 757-9772



To: Transportation Commission

From: Herman Stockinger, Transportation Commission Secretary

Re: Request to adopt the proposed changes to the Rules Governing Practice and Procedures of the Transportation Commission of Colorado

Date: February 7, 2014

Summary: The Transportation Commission last updated its Rules Governing Practice and Procedures on November 14, 2011. The Commission recently determined that the election of officers should be changed from August to July. This necessitates a modification of the Commission Rules, and requires compliance with the Administrative Procedure Act pertaining to rule-making. The Commission opened the rulemaking process on December 19, 2013 and authorized an Administrative Hearing Officer to preside over a rulemaking hearing. A hearing was held on January 31, 2014. As part of this agenda item, the Administrative Hearing Officer has submitted a summary of the hearing and recommends the Commission adopt the proposed changes to the rules. If the Commission adopts the rules in February, they will take effect April 14, 2014.

1. Action Requested: The Department requests the Commission adopt the proposed changes to the Rules Governing Practice and Procedures of the Transportation Commission of Colorado.

2. Documents Included in this Agenda Submission

- A. Proposed changes to rules
- B. Administrative Hearing Officer Summary of Findings (and transcript of hearing)
- C. Proposed Resolution
- D. Red-line copy of rules

3. Rationale: The Transportation Commission is granted authority pursuant to § 43-1-106(6), C.R.S. to “adopt rules in relation to its meeting and the transaction of its business.” Because rules have the effect of law, the Administrative Procedure Act, § 24-4-103, C.R.S., requires compliance with all steps of the rule-making process if any substantive change is made to rules.

Rule 3.6 currently states “Annual election of officers shall be the first order of business at the Commission’s regular August meeting.” The Commission has determined that it should hold the annual election officers at its July meeting to more closely match the timing of new incoming Commission appointments and the start of the Commission and new fiscal year. The Rules have also been renumbered and minor changes have been made to correct statutory citations and modify wording with no substantive impact.

MEMORANDUM

DEPARTMENT OF TRANSPORTATION

Right of Way Program
4201 East Arkansas Avenue 4th floor
Denver, Colorado 80222
(303) 757-9836



DATE: February 5, 2014

TO: Colorado Transportation Commission

FROM: Christine Rees, Administrative Hearing Officer

SUBJECT: Rulemaking Hearing on Proposed Rules 2 CCR 601-11
Rules of Practice and Procedures of the Transportation Commission of
Colorado

Background:

Pursuant to §43-1-106(6) and § 43-1-106(8)(k), C.R.S., the Colorado Transportation Commission has the authority to adopt rules in relation to its meetings and the transaction of business. On December 19, 2013, the Transportation Commission, by Resolution TC 3124, authorized an Administrative Hearing Officer to conduct a hearing on proposed changes to the rules (Exhibit 1). On January 31, 2014, 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 Transportation Commission Resolution, a public hearing was held on January 31, 2014 in the auditorium at the CDOT Headquarters Complex, 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 10:04 a.m. Tromila Maile, the Commission Liaison, explained why the Commission is recommending changes, and reviewed the exhibits (Transcript page 5).

Ms. Maile stated that the Commission determined that it will elect officers annually in July rather than August, requiring a change to Rule 3.6. Otherwise, minor modifications have been made to the rules, including revising numbering and statutory citation (Transcript page 6). The Statement of Basis for the rules is contained in Exhibit 9. A cost benefit analysis was not required, (exhibit 3C).

Ms. Maile then demonstrated how CDOT complied with the requirements of the State Administrative Procedure Act. Specifically, Ms. Maile noted that CDOT:

- Obtained proper hearing delegation from the Commission, (Exhibit 1).
- Filed a timely Notice of Rulemaking with the Secretary of State, (Exhibit 2).
- Published the Notice in the Colorado Register, (Exhibit 2).
- Filed the rules with the Department of Regulatory Agencies, (Exhibit 3).
- Posted the proposed rules to the CDOT website on December 30, 2013 (Exhibit 4).

- Notified the representative group and the interested parties of the date, time and location of the hearing and requested comments, (Exhibit 5, 6 and 7).
- Received notice of the requirement to maintain a permanent file of the rulemaking record, (Exhibit 9).
- Posted timely notice in the rulemaking hearing the lobby of the Department Headquarters Building, (Exhibit 9).

Findings

I have reviewed the entire record of this proceeding. The record consists of all exhibits from the January 31, 2014 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 rules as submitted in Exhibit 8.
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 Transportation Commission Office. 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 10 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 adopt the proposed rules.

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

Christine Rees


cc: Don Hunt, CDOT Executive Director
Herman Stockinger, Commission Secretary

1 Rulemaking Hearing on the
2 Rules Governing Practice and Procedures of the
3 Transportation Commission of Colorado
4 2 CCR 601-11
5
6 January 31, 2014, 10:00 a.m.
7 Colorado Department of Transportation
8 4201 East Arkansas Avenue, Denver, Colorado 80222

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<p>1 *****</p> <p>2 HEARING OFFICER: Good morning. I</p> <p>3 will now call this hearing to order. This is a</p> <p>4 rulemaking proceeding pursuant to the Colorado</p> <p>5 Revised Statutes § 24-4-103(4)(a), of the State</p> <p>6 Administrative Procedure Act, concerning revisions</p> <p>7 to the Rules Governing Practice and Procedures of</p> <p>8 the Transportation Commission of Colorado,</p> <p>9 2 CCR 601-11.</p> <p>10 Section § 43-1-106(6), C.R.S.</p> <p>11 authorizes the Transportation Commission to</p> <p>12 promulgate these rules.</p> <p>13 Today is January 31, 2014. It is now</p> <p>14 10:04. This hearing is being conducted at the</p> <p>15 Colorado Department of Transportation, 4201 East</p> <p>16 Arkansas Avenue, in the Auditorium, Denver,</p> <p>17 Colorado.</p> <p>18 My name is Christine Rees. I am an</p> <p>19 Administrative Hearing Officer for the Department of</p> <p>20 Transportation, which I will refer to as the</p> <p>21 "Department." I am presiding at this rulemaking</p> <p>22 hearing based upon a delegation of authority from</p> <p>23 the Transportation Commission dated December 19,</p> <p>24 2013, which is included in the exhibits as Exhibit</p> <p>25 1.</p>	<p>1 will describe the reason why the Department is</p> <p>2 recommending amendment to these rules and will</p> <p>3 review and submit exhibits.</p> <p>4 If anyone were present, I would call</p> <p>5 on you to speak, but there are no members of the</p> <p>6 public or other CDOT staff present, outside of the</p> <p>7 rulemaking officer.</p> <p>8 I will then invite a representative of</p> <p>9 the Attorney General's Office to make any statements</p> <p>10 concerning the rules or procedures. After which, I</p> <p>11 will make a finding as to whether or not the</p> <p>12 rulemaking procedure, including the hearing, was</p> <p>13 conducted in compliance with the State</p> <p>14 Administrative Procedure Act.</p> <p>15 At the conclusion of the hearing</p> <p>16 today, the period for testimony will be closed.</p> <p>17 I will prepare a record for the</p> <p>18 consideration of the Transportation Commission. It</p> <p>19 will include all of the exhibits and all of the</p> <p>20 testimony, both written and oral, that were provided</p> <p>21 today. The Transportation Commission will consider</p> <p>22 all information when it makes the decision on</p> <p>23 whether or not to adopt the rules.</p> <p>24 Are there any questions before I ask</p> <p>25 the Department staff members to present?</p>

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<p>1 Sets of the rules we are reviewing</p> <p>2 today are available in the back of the room.</p> <p>3 A sign-in sheet is also available at</p> <p>4 the back of the room. We ask everyone to sign in to</p> <p>5 indicate who attended this hearing. If you have not</p> <p>6 had a chance, please sign in.</p> <p>7 In addition, on the sign-in sheet</p> <p>8 there is a column in which you may check whether or</p> <p>9 not you wish to speak on the record today. I</p> <p>10 encourage anyone who has anything to offer to come</p> <p>11 forward and speak when you have that opportunity. I</p> <p>12 will be calling on those who wish to testify based</p> <p>13 on the order in which you've signed the attendance</p> <p>14 sheet.</p> <p>15 The procedure we'll follow this</p> <p>16 morning is relatively informal. I will allow</p> <p>17 everyone an opportunity to speak who wishes to do</p> <p>18 so.</p> <p>19 This hearing is limited only to the</p> <p>20 rules identified in the Notice of Rulemaking that</p> <p>21 was published in the Colorado Register. The notice</p> <p>22 is part of the packet today. Please limit all</p> <p>23 comments to these rules only.</p> <p>24 First, the Department staff will give</p> <p>25 a presentation on the rules at issue today. Staff</p>	<p>1 Would the Department of Transportation</p> <p>2 like to begin. Please state your name and your</p> <p>3 position for the record.</p> <p>4 MS. MAILE: Thank you, Madam Hearing</p> <p>5 Officer. I'm Tromila Maile, the Commission Liaison</p> <p>6 for the Transportation Commission. Mary Frances</p> <p>7 Nevans, the CDOT rules administrator is also present</p> <p>8 to answer any questions.</p> <p>9 Today is January 31, 2014. The Notice</p> <p>10 of Rulemaking was filed with the Colorado Secretary</p> <p>11 of State on December 23, 2013, and was published in</p> <p>12 the Colorado Code of Regulations on January 10,</p> <p>13 2014, meeting the requirement that the hearing be</p> <p>14 held no later than January 30, 2014.</p> <p>15 I would now like to review the</p> <p>16 exhibits in order to establish that the Department</p> <p>17 of Transportation met all of the requirements of the</p> <p>18 State Administrative Procedure Act.</p> <p>19 If members of the audience would like</p> <p>20 to review the exhibits, a copy is available on the</p> <p>21 back table. Additionally, we can make a copy of any</p> <p>22 document for those in the audience.</p> <p>23 So I misstated that. Today's January</p> <p>24 31, 2014, and the Notice of Rulemaking was filed</p> <p>25 with the Colorado Secretary of State on December 23,</p>

6	<p>1 2013, and was published in the Colorado Code of</p> <p>2 Regulations on January 10, 2014, meeting the</p> <p>3 requirement that the hearing be held no earlier than</p> <p>4 January 30, 2014.</p> <p>5 The Transportation Commission rules</p> <p>6 are being revised in order to change the month that</p> <p>7 annual election of officers is held, in Rule 2.06,</p> <p>8 from August to July. The rules have also been</p> <p>9 updated to conform to the formatting suggested by</p> <p>10 the Colorado Secretary of State, and other minor</p> <p>11 changes have been made.</p> <p>12 To review the exhibits: Exhibit 1 is</p> <p>13 Resolution TC-3124 dated December 19, 2013, opening</p> <p>14 the permanent rules and delegating authority to an</p> <p>15 Administrative Hearing Officer to conduct this</p> <p>16 rulemaking hearing.</p> <p>17 Exhibit 2 is a Notice of Rulemaking</p> <p>18 Confirmation establishing that the Department filed</p> <p>19 the rules with the Colorado Secretary of State's</p> <p>20 Office on December 23, 2013. The notice contains</p> <p>21 the hearing date, time and location as required by</p> <p>22 § 24-4-103(3)(a) C.R.S., and it has been continually</p> <p>23 published on the Secretary of State's website since</p> <p>24 that date.</p> <p>25 The second and third page of Exhibit 2</p>	8	<p>1 Exhibit 6 is an email dated December</p> <p>2 27, 2013, notifying the interested parties of this</p> <p>3 rulemaking.</p> <p>4 Exhibit 7 are the individuals notified</p> <p>5 of this rulemaking hearing.</p> <p>6 Exhibit 7A includes individuals and</p> <p>7 entities on CDOT's general rulemaking notification</p> <p>8 list who have requested to be notified of all</p> <p>9 rulemaking activities.</p> <p>10 Exhibit 7B is a list of the members of</p> <p>11 the Statewide Transportation Advisory Committee who</p> <p>12 also received notice. The email provided notice of</p> <p>13 today's hearing date and a strike-through copy of</p> <p>14 the rules. The Department did not receive any</p> <p>15 comments from the representative group or the</p> <p>16 interested parties.</p> <p>17 Exhibit 8 is the redlined copy of</p> <p>18 2 CCR 601-11 showing the proposed changes to the</p> <p>19 existing rules.</p> <p>20 Exhibit 9 consists of three pages and</p> <p>21 includes the Statement of Basis and Purpose and</p> <p>22 Statutory Authority required to be made part of the</p> <p>23 rulemaking record, pursuant to § 24-4-103(4)(a)</p> <p>24 C.R.S.</p> <p>25 Page 2 is a memo to maintain a</p>
7	<p>1 is a printout from the Colorado Register showing</p> <p>2 that the notice of hearing was published in the</p> <p>3 Colorado Register on January 10, 2014.</p> <p>4 Exhibit 3A is a Notice of Rulemaking</p> <p>5 Confirmation from the Department of Regulatory</p> <p>6 Agencies', DORA, website confirming that the rules</p> <p>7 were filed on December 23, 2013.</p> <p>8 Exhibit 3B is the notice from DORA to</p> <p>9 members of the public who have requested to be</p> <p>10 notified of rulemaking regarding transportation, and</p> <p>11 providing them an opportunity to request a cost</p> <p>12 benefit analysis.</p> <p>13 Exhibit 3C is an email confirmation</p> <p>14 from DORA that no cost-benefit analysis is necessary</p> <p>15 for these rules.</p> <p>16 Exhibit 4 is a printout from the CDOT</p> <p>17 website establishing that the Department posted the</p> <p>18 rules on December 30, 2013. The proposed amendments</p> <p>19 to the rules have been posted continually since that</p> <p>20 time.</p> <p>21 Exhibit 5 is an email sent on December</p> <p>22 23, 2013, to senior management team members</p> <p>23 notifying them of the rulemaking. In this case, the</p> <p>24 senior management team constitutes the</p> <p>25 Representative Group.</p>	9	<p>1 permanent rulemaking record. Page 3 is the notice</p> <p>2 required to be posted in the lobby of CDOT at least</p> <p>3 five days prior to the hearing. This notice was</p> <p>4 posted on January 24, 2014.</p> <p>5 I would like to enter Exhibits 1</p> <p>6 through 9 into the record for consideration. I</p> <p>7 would also like to ask that if the Department finds</p> <p>8 any scrivener's errors it may correct them.</p> <p>9 HEARING OFFICER: Thank you. Exhibits</p> <p>10 1 through 9 have been entered into the record.</p> <p>11 MS. MAILE: All of the exhibits we've</p> <p>12 discussed have been offered into the record for your</p> <p>13 consideration. I would ask that you find all of the</p> <p>14 statutory requirements of the APA have been met, at</p> <p>15 the end of this public hearing.</p> <p>16 HEARING OFFICER: Thank you. Since</p> <p>17 there's no one else present from the Department of</p> <p>18 Transportation here today to testify today and there</p> <p>19 are no members of the public or audience either</p> <p>20 signed in on the attendance sheet or present, we</p> <p>21 will conclude the public hearing, public question</p> <p>22 and answer period.</p> <p>23 I will ask the representative of the</p> <p>24 Attorney General's Office to make any comments about</p> <p>25 the rules or procedures today.</p>

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<p>1 MS. YOUNG: Good morning. My name is 2 Kathy Young and I am the First Assistant Attorney 3 General with the Transportation Unit of the Attorney 4 General's Office. It is my opinion that the 5 rulemaking procedure carried out by the Department, 6 including the rulemaking hearing today, was held in 7 accordance with the Administrative Procedure Act. 8 I have no further comments. 9 HEARING OFFICER: Thank you. If there 10 are no other comments, I will make my findings that: 11 The Transportation Commission properly delegated 12 authority to me to conduct this hearing; 13 that the Department met the requirements of the 14 State Administrative Procedure Act; and that this 15 rulemaking hearing has been conducted in conformance 16 with the State Administrative Procedure Act. 17 I find that the record does support 18 amendment of the Rules Governing the Practice and 19 Procedures of the Transportation Commission of 20 Colorado. 21 I will recommend to the Transportation 22 Commission that the amendments should be adopted, if 23 it so chooses. 24 I will grant Ms. Maile's request to 25 correct any scrivener's errors prior to submitting</p>	<p>1 CERTIFICATE 2 STATE OF COLORADO))ss. 3 CITY AND COUNTY OF DENVER) 4 5 I, Angela Smith, Professional Reporter 6 and Notary Public for the State of Colorado, do 7 hereby certify that the above-mentioned hearing was 8 taken in shorthand by me and was reduced to 9 typewritten form by computer-aided transcription, 10 that the foregoing is a true transcript of the 11 proceedings had; that I am not attorney nor counsel 12 nor in any way connected with any attorney or 13 counsel for any of the parties to said action or 14 otherwise interested in its event. 15 IN WITNESS WHEREOF, I have hereunto 16 affixed my hand and notarial seal this 6th day of 17 February 2014. 18 My commission expires January 22, 19 2015. 20 21 22 23 24 25</p> <hr/> <p>Angela Smith Professional Reporter, Notary Public Calderwood-Mackelprang, Inc.</p>
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<p>1 the rules to the Transportation Commission for its 2 consideration. 3 Finally, I find that the public did 4 have an opportunity to comment. 5 Is there anything else to include in 6 the hearing today? Anything else? 7 If there is nothing else, I will 8 prepare a record for the Transportation Commission. 9 The record will be available for inspection by the 10 public and kept on file with the permanent 11 rulemaking record. 12 Any questions? 13 The oral testimony portion of the 14 rulemaking procedure is now closed. The hearing is 15 adjourned. Thank you. 16 (WHEREUPON, the hearing was concluded 17 at 10:17 a.m.) 18 19 20 21 22 23 24 25</p>	

DEPARTMENT OF TRANSPORTATION

Transportation Commission

2 CCR 601-11

Rules Governing Practice and Procedures of the Transportation Commission of Colorado
GENERAL RULES OF PRACTICE AND PROCEDURE BEFORE THE TRANSPORTATION
COMMISSION OF COLORADO

2 CCR 601-11

4.0 — Statement of Basis, Purpose, and Statutory Authority

4.1 — ~~Basis and Purpose:~~ The purpose of these rules is to set forth provisions governing the Transportation Commission's actions, administrative practices, and transaction of business. The rules are being updated to make one substantive change to rule 3.6 (changing the annual election of officers from the August regular meeting to July) and to otherwise make numbering and other non-substantive changes.

4.2 — ~~Statutory Authority:~~ The specific authority under which the Transportation Commission of Colorado shall establish these rules is set forth in ~~§ 43-1-106(6) and § 43-1-106(8)(k), C.R.S. (2010).~~

21.00 Definitions

~~2.11.01~~ "Ad Hoc Committee" shall mean a committee created by the Commission for the purpose of addressing a specific need of a non-continuous nature.

~~2.21.02~~ "Bridge Enterprise Board of Directors" shall mean a type 1 board as defined in ~~§ 24-1-105, C.R.S., (2010)~~ and shall be comprised of the members of the Transportation Commission of Colorado pursuant to ~~§ 43-4-805(2) C.R.S. (2010),~~

~~21.03~~ "Commission" shall mean the Transportation Commission of Colorado.

~~21.04~~ "Department" shall mean the Colorado Department of Transportation.

~~21.05~~ "Executive Director" shall mean the Executive Director of the Colorado Department of Transportation.

~~21.06~~ "Headquarters" shall mean 4201 East Arkansas Avenue, Denver, Colorado 80222.

~~21.07~~ "HPTE Board" shall mean the Board of Directors of the High Performance Transportation Enterprise pursuant to ~~§ 43-4-806(2)(a), C.R.S., (2010)~~ which shall be a type 1 board as defined in ~~§ 24-1-105, C.R.S., (2010)~~ and shall include three members of the Transportation Commission appointed by resolution of the Commission.

~~21.08~~ "Meeting" shall mean any kind of gathering convened to discuss public business, in person, by telephone, electronically, or by other means of communication pursuant to ~~§ 24-6-402(1)(b), C.R.S., (2010).~~

~~21.09~~ "Secretary" shall mean the Secretary of the Transportation Commission of Colorado.

21.10 "Standing Committee" shall mean a committee created by the Commission to address a general need of a continuous nature.

21.11 "State" shall mean the State of Colorado.

32.00 Commission Members – Elections – Appointments - Successions

32.01 The Commission consists of eleven members, appointed by the Governor with the consent of the Senate for terms of four years. Each Commissioner shall reside in the district the Commissioner represents.

32.02 All members of the Commission shall take an oath of office prescribed by the constitution of the state for state officers and the oath shall be filed by the Secretary in the Office of the Secretary of State.

32.03 The members of the Commission and their successors shall constitute a body corporate to be known as the "Transportation Commission of Colorado"; shall have the power to adopt and use a common seal and to change and alter such seal at will; and shall have and exercise all powers necessarily incident to a body corporate.

32.04 All members of the Commission shall also serve as members of the Bridge Enterprise Board of Directors.

32.05 Three members of the Commission shall be appointed by Commission resolution to serve on the Board of Directors of the High Performance Transportation Enterprise.

32.06 Annual election of officers shall be the first order of business at the Commission's regular ~~August~~ July meeting.

32.07 The Commission shall elect a Chairman, Vice Chairman and Secretary to serve for one year or until successors are elected.

32.08 The Chairman shall preside at all regular meetings of the Commission. The Chairman shall be a member of the Commission.

32.09 The Vice Chairman, in the absence or disability of the Chairman shall perform the duties of the Chairman. The Vice Chairman shall be a member of the Commission.

32.10 In the absence or disability of the Chairman or Vice Chairman, the Commission shall elect from its members present a Chairman pro tempore who shall perform the duties of the Chairman for that meeting.

32.11 The Secretary shall assist the Chairman in conducting the meetings of the Commission and shall keep the books and records of the Commission. The Secretary shall be a member of the Department staff.

43.00 Committees of the Commission

43.01 The Commission may create Standing Committees by full consent of the Commission as it deems necessary. As part of the annual election of officers, members shall be appointed by the Chairman, with the consent of the full Commission, to all existing Standing Committees; members so appointed shall serve for one year or until their successors are appointed. The Commission has created the following Standing Committees:

43.01.1 The Audit Review Committee ("ARC"), which shall be comprised of at least three members of the Commission who shall meet periodically with executive management and the Audit Director to review audits, reports and activities of the internal Audit Division. Any Commissioner may refer an audit or a report to the full Commission for consideration.

43.01.2 The Disadvantaged Business Enterprises ("DBE") Committee, which shall be comprised of at least four members of the Commission who shall meet periodically with executive management and the DBE program administrator to review the DBE program.

43.01.3 The Safety Committee, which shall be comprised of at least four members of the Commission who shall meet periodically with executive management to review the safety program.

43.01.4 The Transit and Intermodal Committee ("T&I Committee"), which shall be comprised of at least four members of the Commission who shall meet periodically with executive management and the Division of Transit and Rail Director to review transit and rail policies and practices.

43.01.5 The Efficiency and Accountability Committee, which shall seek ways to maximize the efficiency of the Department to allow increased investment in the transportation system over the short, medium, and long term.

A. Membership shall include, from state government:

1. One member of the Commission designated by the Commission;
2. One member of the Office of the Executive Director designated by the Executive Director;
3. One member from each of the divisions of the Department created in section § 43-1-104(1) C.R.S., ~~(2010)~~ designated by the Executive Director after consultation with the directors of each division; and
4. Any other employees of the Department the Executive Director may designate.

B. Membership shall include, from outside state government, representatives of:

1. The construction industry;
2. The engineering industry;
3. The environmental community;
4. Transportation planning organizations;
5. Public transportation providers; and
6. Any other industries or groups that the Commission determines should be represented on the committee.

C. The Efficiency and Accountability Committee shall periodically report to the Commission and the Executive Director regarding means by which the Commission and the Department may execute their duties more efficiently. The

Executive Director or the Director's designee shall report at least once per calendar year to either the committees of the House of Representatives and the Senate that have jurisdiction over transportation or the Transportation Legislation Review Committee regarding their activities and recommendations and any actions taken by the Commission or Department to implement recommendations of the committee.

43.02 The Chairman, with the consent of a majority of the Commission members, may appoint Ad Hoc Committees as deemed necessary to provide for the efficient conduct of the Commission's business; such committees shall serve at the pleasure of the Chairman.

54.00 Commission Attendance and Notice to Commission of Scheduled Meetings

54.01 Each Commissioner is encouraged to attend the following:

54.01.1 All meetings and hearings of the Commission.

54.01.2 All meetings or gatherings of private groups or associations at which Commission representation is requested.

54.01.3 All organized official field trips of the Commission.

54.01.4 All meetings of the Department and private companies, groups or governmental entities which the Commissioner attends at the request of the Chairman or the Executive Director.

54.01.5 All Commission meetings with Legislators, the Joint Budget Committee, the House Transportation and Energy Committee, and the Senate Transportation Committee.

54.01.6 All meetings of any standing or Ad Hoc Committee to which a Commissioner is appointed.

54.01.7 All meetings a Commissioner is assigned to attend as a representative of the Commission.

54.02 All absences of Commissioners at a meeting or hearing shall be noted by the Secretary in the minutes of any meeting or hearing of the Commission. Commissioners are encouraged to notify the Secretary or Chairman in advance of any meeting or hearing if they will be unable to attend or if they will be absent from a portion of the meeting or hearing.

54.03 If a Commissioner does not answer roll call at the beginning of the meeting, that Commissioner shall be deemed absent unless excused by the Chairman or his or her subsequent arrival is noted in the minutes.

54.04 Except under special or emergency circumstances, the Secretary will provide to the Commission copies of material pertaining to items that require action within seven days of the meeting.

54.05 Special meetings may be called by the Governor, the Executive Director, the Chairman or a majority of the members of the Commission. The Secretary shall provide notice of any special meeting to the Commission by mail or electronic mail no less than three days prior to the date of any special meeting. However, in case of emergency, a 24-hour notice shall be given by telephone or electronic mail. See § 43-1-106(6) C.R.S. (2010).

65.00 Schedule of Meetings – Meeting Location

65.01 Except as provided in this section, regular meetings of the Commission shall be held on the third Thursday of each month and no less than eight times a year.

65.02 A schedule of regular meetings of the Commission shall be established and adopted each December for the upcoming year. By Commission action any such scheduled meeting may be canceled or rescheduled.

65.03 The Chairman of the Commission may propose postponement or advancement of the time and date of any regular meeting for Commission action and the Chairman may remove items from the agenda or rearrange the order of the agenda items.

65.04 The Commission meetings shall be held at ~~h~~Headquarters or at other locations throughout the state. The Commission will consider holding one-third of its meetings outside the Denver area to enable persons throughout the state to attend its meetings and express their opinions to the Commission.

76.00 Public Notice of Meetings

76.01 Public Notice of Commission meetings will be given as provided for in the Colorado Sunshine Act of 1972 (§ 24-6-401, *et seq.* C.R.S. ~~(2010)~~).

76.02 All meetings of two or more members of the Commission at which public business is discussed or at which any formal action may be taken are declared to be public meetings and shall be open to the public at all times, excluding the convening of an executive session pursuant to Rule 87.08. See 24-6-402(2)(a), C.R.S. ~~(2010)~~.

76.03 Any meetings at which the adoption of any proposed policy, position resolution, rule, regulation, or formal action occurs or at which a majority or quorum of the Commission is in attendance, or is expected to be in attendance, shall be held only after full and timely notice to the public. See § 24-6-402(2)(c), C.R.S. ~~(2010)~~.

76.04 The Commission shall be deemed to have given full and timely notice if the notice of the meeting is posted in the lobby of CDOT Headquarters, ~~4201 E. Arkansas Ave., Denver, CO 80222,~~ and on CDOT's website, no less than twenty-four hours prior to the holding of the meeting.

76.05 In addition to the provisions of 76.04 of this rule, public notice of the regular meeting date and proposed agenda shall be posted by the Secretary ~~at in the front entrance lobby~~ of the Headquarters and on CDOT's website at least five days prior to the meeting, or as soon as practicable.

87.00 Conduct of Meetings – Matters Coming Before the Commission

87.01 In any lawsuit or proceedings, all meetings of the Commission shall be presumed to have been duly called and regularly held.

87.02 Except for matters to be considered by the Commission in Executive Session pursuant to § 24-6-402(3)(a) or § 24-6-402(3)(b), C.R.S. ~~(2010)~~, all meetings of the Commission shall be open to the public and shall be conducted by the Chairman generally under Robert's Rules of Order, but may proceed on an informal basis.

87.03 A quorum of the Commission shall be six members. If a quorum of the Commission is present, a majority vote of the members present shall be required to carry any motion, order, regulation or other action of the Commission.

87.04 All formal action of the Commission shall be by resolution adopted at a regular or special meeting of the Commission as required by statute.

87.05 All resolutions originated by Department staff which require a legal determination must be approved as to legality and form by the ~~Chief Transportation Counsel~~Office of the Attorney General or its designee before being accepted as an action item on a Commission meeting agenda.

87.06 Persons or groups wishing to make a presentation at a Commission meeting or hearing may make a request to be placed on the agenda by contacting the Secretary in writing at 4201 East Arkansas Avenue, Room 270, Denver, Colorado 80222 at least 17 days prior to the meeting. The public is encouraged to participate at these meetings.

87.07 Items which are not included or identified as action items in the public notice of the Commission meeting agenda may, nonetheless, be considered by the Commission for action at the noticed meeting on an emergency basis, provided that the items must be approved for action by either the Chairman or a majority of the Commissioners and that the Secretary must post public notice of such additional action items in accordance with the provisions of Section 7-6.00 of this rule.

87.08 Upon the announcement by the Commission to the public of the topic for discussion and after providing as much detail as possible without compromising the purpose for which the executive session is authorized, and by the affirmative vote of two-thirds of its members, the Commission may hold an Executive Session at a regular or special meeting for the sole purpose of considering any of the matters described in § 24-6-402(3)(a) or § 24-6-402(3)(b), C.R.S. (2010). No adoption of any proposed policy, position, resolution, rule, regulations, or formal action, except the review, approval, and amendment of the minutes of an executive session shall occur at any executive session that is not open to the public.

98.00 Records - Minutes

98.01 All meetings of the Commission shall be electronically recorded. The audio files shall be kept permanently by the Secretary.

98.02 The Secretary shall make and maintain minutes of all Commission meetings. Minutes shall be written in the order in which the issues were considered at the meeting, shall be prepared promptly, and shall be open to public inspection. Minutes of each meeting shall state, by name, the Commissioners that are either present or absent and all Department executive management that are present.

98.03 Minutes shall include all matters considered and action taken, if any, but need not be a verbatim transcript. The minutes shall reflect the number of yea and nay votes on each action item and shall state by name the Commissioners voting yea or nay, if there is a division of the vote.

98.04 Minutes of any meeting shall be approved, rejected or modified at the next regular meeting. After approval or modification, minutes shall be signed by the Secretary and made a part of the Commission's records. A copy of the signed minutes of any Commission meeting shall be available to the public upon request.

98.05 The minutes and records of the Commission, books of account, and the seal of the Commission shall be kept in the office of the Secretary and shall be open to public inspection.

98.06 The Secretary will furnish sign-in sheets for all meetings of the Commission. They will be available at the door of the meeting room.

409.00 Compensation – Reimbursement of Expenditures

409.01 Pursuant to § 43-1-106 (6), C.R.S., ~~(2010)~~ each member of the Commission shall receive seventy-five dollars per day for each regular or special meeting of the Commission actually attended and shall be reimbursed for his or her necessary expenses incurred in the discharge of such member's official duties and in accordance with Fiscal Rules and Commission policy.

409.02 Mileage rates for necessary travel shall be computed in accordance with § 24-9-104, C.R.S. ~~(2010)~~, as amended.

140.00 Standards of Conduct – Conflicts of Interest – Disclosure

140.01 A conflict of interest occurs whenever a Commissioner has privileged information or a financial interest which may influence or be reasonably perceived by the public as influencing the conduct of the Commissioner.

140.02 A Commissioner holds a position of public trust and has a fiduciary duty to carry out his or her duties for the benefit of the people of the state in a manner consistent with the applicable standards of conduct of § 24-18-101 through § 24-18-206, C.R.S. ~~(2010)~~. Each Commissioner shall comply with such standards, as follows:

140.02.1 A Commissioner shall not perform an official act which may have a direct economic benefit on a business or other undertaking in which he has a direct or substantial financial interest.

140.02.2 "Financial interest" means a substantial interest held by an individual which is:

- (1) An ownership interest in a business;
- (2) A creditor interest in an insolvent business;
- (3) An employment or a prospective employment for which negotiations have begun;
- (4) An ownership interest in real or personal property;
- (5) A loan or any other debtor interest; or
- (6) A directorship or officership in a business.

140.03 However, a Commissioner may, prior to acting in a manner described above which may impinge on his or her fiduciary duty and the public trust, disclose the nature of his or her private interest in writing to the secretary of state, listing the amount of his financial interest, if any, the purpose and duration of his or her services rendered, if any, and the compensation received for the services or such other information as is necessary to describe his or her interest. If he or she then performs the official act involved, he or she shall state for the record the fact and summary nature of the interest disclosed at the time of performing the act. Such disclosure shall constitute an affirmative defense to any civil or criminal action or any other sanction.

121.00 Adoption of Rules and Regulations

121.01 All rulemaking proceedings authorized by law to be conducted by the Commission, or by a designee on behalf of the Commission, shall be conducted in accordance with the State Administrative Procedure Act ("APA"), § 24-4-101 *et seq.*, C.R.S. ~~(2010)~~ as amended.

132.00 Commission Adjudicatory Hearings

132.01 Adjudicatory hearings may be conducted by the Commission on any issues within the Commission's jurisdiction or the hearing may be delegated by the Commission either to an Administrative Law Judge, in the Division of Administrative Hearings, Department of Administration, or to the Department of Transportation's Executive Director to act as the Hearing Officer. Hearings shall be conducted in accordance with the State Administrative Procedure Act ("APA") § 24-4-101, *et seq.* C.R.S. (2010), unless the Commission's or the Department of Transportation's enabling legislation provides otherwise.

132.02 In cases where the Department conducts adjudicatory hearings, either through the Executive Director or his designee, which may be but shall not be limited to the Chief Engineer or an Administrative Law Judge. The Executive Director, or his or her designee, shall file a written report with the Commission for review setting forth the evidence and the findings and the application of the findings to statutes and rules. Upon review, the Commission may then sustain findings or make new findings based upon the record.

Resolution # TC -

Adopt Rules Governing the Practice and Procedures of the Transportation Commission of Colorado, 2 CCR 601-11

WHEREAS, § 43-1-106(6) and § 43-1-106(8)(k) C.R.S. authorize the Transportation Commission of Colorado (the “Commission”) to promulgate rules in relation to its meetings and the transaction of business; and

WHEREAS, the current Commission rules were last updated on November 14, 2011; and

WHEREAS, the Commission has determined that it will elect officers annually in July rather than August, requiring a change to Rule 3.6; and

WHEREAS, other minor modifications to the Rules were necessary, including revising numbering and statutory citation; and

WHEREAS, the Commission opened the rulemaking process at its December 19, 2013 meeting by TC Resolution 3124; and

WHEREAS, an Administrative Hearing Officer, acting with delegated authority from the Commission, presided over a rulemaking hearing on January 31, 2014; and

WHEREAS, the Administrative Hearing Officer recommends that the Commission adopt the proposed changes to the Rules.

NOW THEREFORE BE IT RESOLVED, the Transportation Commission herein adopts the Rules Governing the Practice and Procedures of the Transportation Commission of Colorado, 2 CCR 601-11, inclusive of all recommended changes.

Transportation Commission Secretary

Date