

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

TRANSCRIPT OF PUBLIC MEETING
Rulemaking Hearing on 2 CCR 601-4, Rules Pertaining to
Transport Permits for the Movement of Extra-Legal
Vehicles or Loads
Held on January 20, 2017

REPORTER'S TRANSCRIPT

The above-entitled public meeting was held at 4201 East Arkansas Avenue, Denver, Colorado, in the Auditorium, on Friday, January 20, 2017, at 1:32 p.m., before Teresa Hart, Registered Professional Reporter and Notary Public.

1 ATTENDEES:
 Andrew Hogle, Hearing Officer
 2 Kathryn Young, Senior Assistant Attorney General
 Marie Nakagawa, Esq.
 3 Dan Wells
 Mary Frances Nevans, Esq.
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 Speakers:
 5 Marie Nakagawa, Esq.
 Dan Well
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1 3 of the exhibit packet.
 2 Sets of the rules we are reviewing today
 3 are available in the back of the room. A sign-in sheet
 4 is also available at the back of the room. We ask
 5 everyone to sign in to indicate who is attending this
 6 hearing. If you have not had the chance, please sign
 7 in.
 8 In addition on the sign-in sheet there is
 9 a column in which you may check whether or not you wish
 10 to speak on the record today. I encourage anyone who
 11 has anything to offer to come forward and speak when
 12 you have that opportunity. I will be calling on those
 13 who wish to testify based on the order in which you
 14 signed the attendance sheet.
 15 The procedure we'll follow this afternoon
 16 is relatively informal. I will allow everyone an
 17 opportunity to speak who wishes to do so.
 18 This hearing is limited only to the rules
 19 identified in the notice of rulemaking that was
 20 published in the Colorado Register. The notice is part
 21 of the packet today. Please limit all comments to
 22 these rules only.
 23 First, Department staff will give a
 24 presentation on the rules at issue today. Staff will
 25 describe the reason why the Department is recommending

1 PROCEEDINGS
 2 * * * * *
 3 MR. HOGLE: Good afternoon. I will now
 4 call this hearing to order. This is a rulemaking
 5 proceeding pursuant to the Colorado Revised Statute
 6 Section 24-4-103(4)(a) of the state Administrative
 7 Procedure Act concerning revisions to the rules
 8 pertaining transport permits for the movement of
 9 extra-legal vehicles or loads.
 10 Sections 42-4-510(1)(b), 511(1), and
 11 Section 43-1-106(8)(k) of the Colorado Revised Statutes
 12 authorized the Transportation Commission to promulgate
 13 these rules.
 14 Today is January 20th, 2017. It is now
 15 1:33 p.m. This hearing is being conducted at the
 16 Colorado Department of Transportation, 4201 East
 17 Arkansas Avenue, in the Auditorium, Denver, Colorado.
 18 My name is Andrew Hogle. I am an
 19 administrative hearing officer with the Department of
 20 Transportation, which I will refer to as the
 21 Department.
 22 I am presiding at this rulemaking hearing
 23 based on a delegation of authority from the
 24 Transportation Commission dated November 17, 2016,
 25 which is included in the exhibits as Exhibit 1B at page

1 amendment to these rules and will review and submit
 2 exhibits.
 3 If anyone has questions, feel free to
 4 raise your hand; but basically we will allot time for
 5 those who wish to make any comments after the
 6 Department has made their presentation.
 7 Next I will call on anyone who noted on
 8 the sign-in sheet that you wish to speak. Your
 9 testimony will be considered as part of the record of
 10 this proceeding. You can also submit a written
 11 statement if you do not wish to speak.
 12 If your written submission has not
 13 already been provided to the Department, you may do so
 14 today. Does anyone wish to submit a written
 15 presentation at this time?
 16 I will then invite a representative of
 17 the attorney general's office to make any statements
 18 concerning the rules or procedures; after which I will
 19 make a finding as to whether or not the rulemaking
 20 procedure, including this hearing, was conducted in
 21 compliance with the State Administrative Procedure Act.
 22 At the conclusion of the hearing today,
 23 the record will be closed. I will prepare a record for
 24 the consideration of the Transportation Commission. It
 25 will include all the exhibits and all the testimony,

1 both written and oral, that were provided today.
 2 The Transportation Commission will
 3 consider all information when it makes the decision on
 4 whether or not to adopt the rules.
 5 Are there any questions before I ask the
 6 Department staff members to present? Would the
 7 Department like to begin?
 8 MS. NAKAGAWA: Thank you, Mr. Hearing
 9 Officer. My name is Marie Nakagawa, and I am the rules
 10 and policy analyst in the Office of Policy and
 11 Government Relations. Today is January 20th, 2017.
 12 The notice of rulemaking was filed with
 13 the Colorado Secretary of State on November 21st, 2016,
 14 and was published in the Colorado Register on
 15 December 10th, 2016, meeting the requirement that the
 16 hearing be held no earlier than December 30th, 2016.
 17 I would now like to review the exhibits
 18 in order to establish that the Department of
 19 Transportation met all of the requirements of the State
 20 Administrative Procedure Act.
 21 If members of the audience would like to
 22 review the exhibits, a copy is available on the back
 23 table. Additionally, we can make a copy of any
 24 document for those in the audience.
 25 I will refer to the exhibit number, and

1 of state's office on November 21st, 2016.
 2 The notice contains the hearing date,
 3 time, and location as required by Section
 4 24-4-103(3)(a) of the Colorado Revised Statutes, and
 5 has been continuously published on the secretary of
 6 state's website since that date.
 7 Exhibit 2B at page 5 is the set of rules
 8 filed with the Colorado Secretary of State to open
 9 rulemaking.
 10 Exhibit 2C at page 12 consists of
 11 four pages and is the printout from the Colorado
 12 Register, dated December 10th, 2016; establishing that
 13 notice of the rulemaking hearing was published in
 14 Volume 39, No. 23 of the Colorado Register.
 15 Exhibit 3 contains the exhibits
 16 demonstrating compliance with the State Administrative
 17 Procedure Act regarding the filing of the rules with
 18 the Department of Regulatory Agencies, known as DORA.
 19 They include Exhibit 3A at page 16, dated
 20 November 21st, 2016, showing that the Department filed
 21 the rules with DORA on November 21st, 2016.
 22 Exhibit 3B at page 17, dated
 23 November 21st, 2016, is the confirmation of the
 24 publication of today's hearing date, and contains all
 25 the information published on DORA's website.

1 also the page number in the exhibit packet, which is
 2 located on the upper right corner of each page.
 3 If Mr. Hearing Officer finds that the
 4 Department fully complied with the Administrative
 5 Procedure Act, and he finds sufficient grounds exist to
 6 amend the permanent rules, the request to approve the
 7 updated rules will be provided to the Transportation
 8 Commission for final approval and adoption.
 9 To review the exhibits: Exhibit 1A at
 10 page 1 is a memo to the Transportation Commission dated
 11 November 17th, 2016, requesting that the Commission
 12 open rulemaking and delegate authority to an
 13 administrative hearing officer to conduct this
 14 rulemaking hearing.
 15 Exhibit 1B at page 3 is Resolution
 16 No. 16-11-9, dated November 17th, 2016, opening the
 17 rules and delegating authority to an administrative
 18 hearing officer to conduct a rulemaking hearing.
 19 Exhibit 2 contains the exhibits
 20 demonstrating compliance with the State Administrative
 21 Procedure Act regarding the filing of the rules with
 22 the Colorado Secretary of State.
 23 Exhibit 2A at page 4 is a notice of
 24 rulemaking confirmation, establishing that the
 25 Department filed the rules with the Colorado secretary

1 Exhibit 3C at page 18, dated
 2 November 21st, 2016, is the e-mail from DORA to all
 3 members of the public who have requested to be notified
 4 of rulemaking regarding transportation rules, and
 5 providing them an opportunity to request a cost benefit
 6 analysis.
 7 Exhibit 3D at page 19, dated
 8 December 19th, 2016, is an e-mail confirmation from
 9 DORA that no cost benefit analysis is necessary for
 10 these rules.
 11 Exhibit 4 at page 20 is a printout from
 12 the CDOT website establishing that the Department
 13 posted the notice of hearing date, time, and location,
 14 and the proposed rules on November 30th, 2016.
 15 Exhibit 5 contains outreach to the
 16 representative group members and interested parties and
 17 the comments submitted in response to CDOT's request
 18 for input.
 19 Exhibit 5A at page 21 is a list of the
 20 representative group members.
 21 Exhibit 5B at page 22 is Ms. Nevans'
 22 e-mail to the representative group members dated
 23 October 14th, 2016.
 24 Exhibit 5C at page 25 is the redlined
 25 copy of the rules e-mailed to the representative group

1 on October 14th, 2016.
 2 Exhibit 5D at page 32 constitutes the
 3 comments from the representative group, including
 4 comments from Mr. Greg Fulton, president of the
 5 Colorado Motor Carriers Association; and
 6 Patti Gillette, vice president of the Colorado Motor
 7 Carriers Association.
 8 Exhibit 5E at page 39 is Ms. Nevans'
 9 follow-up e-mail to the representative group on
 10 November 21st, 2016, regarding an updated draft of the
 11 proposed rules.
 12 Exhibit 5F at page 40 is the list of
 13 interested party members which includes the
 14 representative group members.
 15 Exhibit 5G at page 41 is my e-mail to the
 16 interested party members dated November 23rd, 2016.
 17 This e-mail provided notice of today's hearing.
 18 Exhibit 5H at page 42 is a redlined copy
 19 of the rules that were e-mailed to the interested party
 20 group on November 23rd, 2016.
 21 Exhibit 5I at page 49 consists of
 22 comments on the rules from members of interested party
 23 groups, including comments from Mike Myers, owner of
 24 Myers Pilot Service and Transportation, Incorporated;
 25 and Mr. Randy Sorenson, president of the Professional

1 five days prior to today's hearing.
 2 Exhibit 6B at page 79 is a memo to
 3 maintain a permanent rulemaking record.
 4 Exhibit 6C at page 80 is the notice
 5 required to be posted in the lobby of CDOT at least
 6 five days prior to the hearing. This notice was posted
 7 on January 13th, 2017.
 8 Exhibit 7 at page 81 contains a copy of
 9 the pertinent provisions from the FAST Act.
 10 I would like to enter Exhibits 1 through
 11 7 into the record for consideration. I would also like
 12 to ask that if the Department finds any scrivener's
 13 errors, it may correct them.
 14 MR. HOGLE: Thank you. Are there any
 15 objections? Exhibits 1 through 7 have been entered
 16 into the record.
 17 MS. NAKAGAWA: All of the exhibits we've
 18 discussed have been offered into the record for your
 19 consideration. I would also ask that you find that all
 20 the statutory requirements of the APA have been met at
 21 the end of this public hearing.
 22 MR. HOGLE: Thank you. Is there anyone
 23 else present from the Department who's here today to
 24 testify? I'd ask the audience to please hold any
 25 questions regarding the Department's testimony until

1 Escort Vehicle Operators Association. CDOT's responses
 2 to these comments are also included in this exhibit.
 3 Exhibit 5J at page 67 is an e-mail from
 4 me dated January 6, 2017, to the interested party
 5 group, advising them of subsequent changes to the
 6 proposed rules.
 7 Exhibit 5K at page 69 is the redlined
 8 copy of the rules e-mailed to the interested party
 9 group on January 6th, 2017.
 10 Exhibit 5L at page 76 is an e-mail from
 11 Dan Wells to members of the Western Association of
 12 State Highway and Transportation Officials, known as
 13 WASHTO; and a table showing comments from WASHTO
 14 members.
 15 Exhibit 6 consists of three pages and
 16 includes Exhibit 6A at page 78, which is the statement
 17 of basis and purpose and statutory authority required
 18 to be made part of the rulemaking record pursuant to
 19 Section 24-4-103(4)(a) of the Colorado Revised
 20 Statutes.
 21 The draft rules and the statement of
 22 basis and purpose were prepared and made available in
 23 the Office of Policy and Government Relations at CDOT
 24 headquarters by January 13th, 2017, in compliance with
 25 the requirement to have them available for inspection

1 the end.
 2 MR. WELLS: Good afternoon, Mr. Hearing
 3 Officer. My name is Dan Wells. I'm the manager for
 4 the Oversize/Overweight permits program at the Colorado
 5 Department of Transportation.
 6 The rules pertaining to transport permits
 7 for the movement of extra-legal vehicles or loads,
 8 which I refer to as the Oversize/Overweight rules, were
 9 last updated on November 14, 2015.
 10 The currently proposed changes to the
 11 Oversize/Overweight rules are primarily a result of the
 12 passage of the FAST Act; the pertinent provisions of
 13 which are located at Exhibit 7; which made changes to
 14 truck size and weight provisions, and clarified that
 15 vehicles carrying fluid milk products are considered
 16 non-divisible.
 17 Other proposed changes to the rules
 18 include updates to the Pilot Escort Driver
 19 requirements, as well as other nonsubstantive changes.
 20 I would now like to go through the
 21 proposed changes to the Oversize/Overweight rules.
 22 I'll be referring to Exhibit 5K, located at page 69 of
 23 the exhibit packet, which is a redlined copy of the
 24 rules that includes changes based on comments from the
 25 interested party group. This is the final version of

1 the rules that is being submitted to the hearing
2 officer today.

3 The proposed changes include the
4 following: On page 69, Rules 101 and 102 were updated
5 to reflect the changes from this rulemaking hearing.
6 On page 70 from rules under chapter 2, a new Rule 207
7 was added for the definition of bulk fluid milk
8 products.

9 Based on the admission of the new
10 definition, the old Rule 207 and 208 were renumbered to
11 208 and 209 respectively. The old Rule 209, which
12 defined the abbreviation CRS, was deleted. The rest of
13 the rule numbers in Chapter 2 remain the same.

14 In Rule 236 the term "bulk fluid milk
15 products" was added to the second paragraph in the
16 rule. On pages 70 and 71, for rules under Chapter 4,
17 Rules 407.3, 407.3.1, and 407.3.2 were stricken.

18 Rule 407.4 was renumbered to 407.3 based
19 on the deletion of Rule 407.3. This also changed the
20 numbers of Rules 407.4.1, 407.4.2, and 407.4.3 to the
21 new numbers, 407.3.1, 407.3.2, and 407.3.3.

22 Rule 409.4 was added, which requires an
23 extra-legal vehicle or load more than 17 feet in height
24 to be accompanied by a licensed signal contractor
25 through all intersections controlled by an overhead

1 allowed and must be accompanied by a secondary means of
2 securement.

3 On page 73 and 74, for Rules under
4 Chapter 7, Rule 704.4.3.6, was added to exempt a
5 covered heavy duty tow and recovery vehicle from the
6 requirement to obtain an overweight permit.

7 Rule 704.4.3.6.1 was added to define the
8 term "covered heavy-duty tow and recovery vehicle."
9 Rule 712 was deleted and replaced with a new Rule 712,
10 which addresses emergency vehicles.

11 Rule 712.1 was added to clarify that an
12 authorized emergency vehicle, as defined in
13 Section 42-1-102(6) of the Colorado Revised Statutes,
14 is exempted from the requirement to obtain an
15 overweight permit if the gross vehicle weight is less
16 than 8,600 pounds. It also lists the maximum axle
17 allowances.

18 Rule 712.2 was added to clarify that
19 weight allowances for axle configurations that are not
20 listed in Rule 712.1 are listed on the Colorado Bridge
21 Weight Limit map.

22 On page 75 for rules under Chapter 10:
23 In Rule 1007 the address of the CDOT headquarters
24 building was deleted, and now generally refers to CDOT
25 headquarters building.

1 traffic signal.

2 On pages 71 and 72 for rules under
3 Chapter 5, Rule 500.5 was changed to include the
4 phrase: "For this immediate previous five-year period"
5 at the beginning of the second sentence.

6 Rule 500.8 was stricken. Rules 500.9 and
7 500.10 were renumbered to 500.8 and 500.9 respectively
8 based on the deletion of old Rule 500.8. The newly
9 renumbered rule, 500.9, was updated with additional
10 requirements for all pilot escort drivers, specifying
11 the information that the drivers must comply within
12 their operation.

13 The provision and newly renumbered
14 500.9.2 was replaced with proof of insurance as
15 required in 500.4.3. The provision in newly renumbered
16 500.9.3 was replaced to refer to the original transport
17 permit.

18 The old rules 500.10.4 through 500.10.7
19 were stricken. In Rule 505.1.5, the reference to the
20 D cell batteries were deleted. In Rule 505.1.6, the
21 safety specifications were updated; a new sentence was
22 added to require Class 3 reflective vests during hours
23 of darkness.

24 In Rule 505.1.7 two sentences were added
25 to clarify the compression fittings alone are not

1 As stated before, these changes are
2 reflected in Exhibit 5K at pages 69 through 75. This
3 concludes my testimony.

4 MR. HOGLE: Just to clarify, I believe
5 you stated Rules 1007 with a new address, it is
6 actually 1004 in the record; is that correct? Thank
7 you.

8 Is there anyone else present from the
9 Department who's here to testify today?

10 MS. NEVANS: If I could have just
11 one minute, Mr. Hearing Officer.

12 MR. HOGLE: We're currently in recess.
13 (Pause in the proceedings.)

14 MS. NEVANS: Thank you, Mr. Hearing
15 Officer. My name is Mary Frances Nevans. I'm with the
16 Office of Policy Government Relations at CDOT.

17 And I wanted to clarify one small word
18 that was changed in Mr. Wells' presentation. It's on
19 page 71, it's Rule 409.4.

20 And just so that we have an accurate
21 transcript, the new rule reads: An extra-legal vehicle
22 or load more than 17 feet in height must be accompanied
23 by a licensed signal contractor through all
24 intersections controlled by an overhead traffic signal.

25 I think Mr. Wells had said: To be

1 accompanied instead of must.
 2 MR. HOGLE: Thank you for that
 3 clarification.
 4 MS. NEVANS: Okay. Thank you.
 5 MR. HOGLE: Do we have a list of anyone
 6 who's signed in? I'm also going to admit the hearing
 7 attendance record as Exhibit 8. I'll also include in
 8 my record a copy of the transcript from this hearing.
 9 Is there anyone else that has any
 10 comments to make at this time? I will ask the
 11 representative of the attorney general's office to make
 12 any comments about the rules or the procedures today.
 13 MS. YOUNG: Good afternoon. My name is
 14 Kathy Young, and I am a first assistant attorney
 15 general with the attorney general's office in the
 16 transportation unit.
 17 It is my opinion that the rulemaking
 18 procedure carried out by the Department, including the
 19 rulemaking hearing today, was held in accordance with
 20 the Administrative Procedure Act. I have no further
 21 comments.
 22 MR. HOGLE: Thank you. If there are no
 23 other comments, I will make my findings that the
 24 Transportation Commission properly delegated authority
 25 to me to conduct this hearing; that the Department met

1 CERTIFICATE
 2
 3 STATE OF COLORADO)
 COUNTY OF DENVER) ss.
 4
 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 February 3, 2017.
 17 My commission expires: January 19, 2020.
 18
 19 _____
 20 TERESA HART
 Registered Professional Reporter
 and Notary Public
 CALDERWOOD-MACKELPRANG, INC.
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1 the requirements of the State Administrative Procedure
 2 Act, and that this rulemaking hearing has been
 3 conducted in conformance with the State Administrative
 4 Procedure Act.
 5 I find that the record does support
 6 amendment of the rules pertaining to transport permits
 7 for the movement of extra-legal vehicles or loads.
 8 I will recommend to the Transportation
 9 Commission that the amendments should be adopted if it
 10 so chooses. I will grant Ms. Nakagawa's request to
 11 correct any scrivener's errors prior to submitting the
 12 rules to the Transportation Commission for its
 13 consideration. Finally, I find that the public did
 14 have an opportunity to comment.
 15 Is there anything else to include in
 16 today's hearing? Anything else?
 17 As there is nothing else, I will prepare
 18 a record for the Transportation Commission. The record
 19 will be available for inspection by the public and kept
 20 on file with the permanent rulemaking record.
 21 The record is now closed, and this
 22 hearing is adjourned. Thank you.
 23 (The hearing was concluded at 1:55 p.m.)
 24
 25