

## **Fiscal Rule Hearing on July 30, 2007**

This is a public hearing on the Adoption of State Travel Management Program Rules that is held under the authority of Part 1, Title 24, Article 30 of the Colorado Revised Statutes. The purpose of the hearing is to consider adoption of changes to the State of Colorado State Travel Management Program Rules, 1 CCR 103-1.

I am Scott Madsen, Division Director for the Division of Central Services. I will be conducting this meeting.

A Notice of Hearing, which included the proposed changes to the State Travel Management Program Rules, was filed with the Secretary of State and the Department of Regulatory Agencies on June 15, 2007.

To my knowledge we have not received comments on the proposed rules. Copies of the proposed rules are available and I hope all of you have those.

After the hearing, as the Division Director, I have 180 days to adopt or not adopt the proposed changes. This is to give you some idea of the timeframes we are looking at in moving ahead with this.

We are here to receive public comments on the proposed changes to the State Travel Management Program Rules. These are NOT the same as Fiscal Rule 5-1 that concerns travel. The Fiscal Rule Hearing will be conducted immediately at the conclusion of this hearing.

The floor is now open for comments.

Yes, would you state your name?

Mike Coulter, Colorado Department of Revenue. Just for clarification, do you have any timeline on when you anticipate when those proposed rules? Are they going to be implemented together in a basket or are they going to be broken out?

You're talking about these rules and the fiscal rules?

And the fiscal rules.

They should all be under the same timeframe so they will be implemented at the same time.

Under the 180 days?

Right. With the 180 days it's looking like October 1. Is there anyone else?

Okay. Thank you for your comments. Any comments are a part of the record of this hearing, and will be considered as part of the rule adoption process.

I want to thank everybody for coming to this portion of it. Apparently with this many people you must all be here for the Fiscal Rules. Seeing no other persons who are interesting in making comments I declare this hearing on the State Travel Management Program Rules is hereby concluded.

This is a public hearing on the Adoption of Fiscal Rules that is held under the authority of Part 1, Title 24, Article 30 of the Colorado Revised Statutes. The purpose of the hearing is to consider adoption of changes to the State of Colorado Fiscal Rules, 1 CCR 101-1.

I am Les Shenefelt, the Controller for the State of Colorado. I will be conducting the hearing. Also with me is Bob Jaros, the Deputy State Controller.

A Notice of Hearing, which included the proposed changes to the Fiscal Rules, was filed with the Secretary of State and the Department of Regulatory Agencies on June 15, 2007. We later distributed a modified draft of the proposed changes to Rule 5-1. An even newer version has been handed out today. The version of proposed Rule 5-1 you have received today has the same wording and provisions as draft #2. This version, handed out today, of rule 5-1 has had paragraph and provision numbering only added to make referencing easier.

The proposed changes involve the following fiscal rules:

- Rule 2-2 Commitment Vouchers
- Rule 3-1 State Contracts
- Rule 5-1 Travel

We have received comments on the proposed rules. Copies of the proposed rules and comments are available on the table. As I said we did run out of copies, so if you can share or if you need a copy please let me know.

After the hearing, I as the State Controller, have up to 180 days to adopt or not adopt the proposed changes. This is to give you some idea of the timeframes we are looking at in moving ahead with this matter.

We are here to receive public comments on the proposed changes to the Fiscal Rules. In general we will not be answering your questions at this hearing unless your question is to clarify a provision of the rule.

The floor is now open.

Because we have a number of people who wish to make comments at this hearing, I would ask that you limit your comments to 5 minutes each. Also, please provide new comments rather than reiterating comments from previous speakers. If you want to go on record in agreement with a previous speaker, you may do so. When expressing agreement, please limit your comments to expressing agreement and add any additional new comments you want on the record. Also, if you have submitted written comments prior to this Hearing, please do not read from your written comments. If you wish, you may verbally summarize your written submission.

Before I start taking comments I want to read into the record the written comments that we have received before the hearing. These comments are hereby included into the record in this hearing.

- o Dianne Stump on behalf of the Controller's Forum;
- o Vicki Nichol on behalf of the Higher Education Financial Advisory Council.  
There are two written comments from Vicki and the Advisory Committee;
- o Don Rieck, Public Health and Environment;
- o Sue Griswold, Department of Natural Resources;
- o Brent Voge, Department of Revenue;
- o Dave Grier, Department of Education;
- o Mike Coulter, Department of Revenue;
- o Robert Schur, Colorado State University;
- o Mary Catherine Gaisbauer, University of Colorado

With that the floor is open for public comment. I ask that you do please come to the table. We don't have the most sophisticated recording system in use today so coming to the table will help us make sure that we get your comments on the record for the hearing. When you do come up please state your name and the agency or organization that you're representing. Just let me kind of clarify what I'm going to do here today. I want to do 2-2, 3-1, and 5-1, in that order please.

Lisa Eze, Purchasing Director, Colorado Department of Labor and Employment. I would like to kind of agree with some of the written comments that have been submitted and beyond that on 2-2, under 10.4 vendor agreements. This is a new addition to the fiscal rules that requires agencies or institutions of Higher Ed to delete or nullify by specific reference all conflicting or impermissible terms, if a vendor agreement is attached as a exhibit to a state purchase order or state contract. Typically this is the approach we take; however, there are times when we are in negotiations that we can't come to a final agreement and our agency makes a determination that we will be silent on the conflicting terms and this has been kind of an industry practice in the state and has been approved by previous state controller staff. We would like to request that we continue to have that option, kind of as a last resort. Our first step really is to negotiate out those conflicting terms but the first paragraph on the back of the PO says any, and it lists the terms, if the vendor agreement contains an indemnification limitation liability or some other terms that they're null and void. So we take that as the specific reference to those terms but there may be others that are conflicting that we are silent on. So, we would like to request that. Are you taking any comments on the policies at this time?

Since they are part of the rule notification the answer is yes.

One policy that I would like to raise a question on and possibly a clarification is the use of contracts. The policy requires all agencies and I'm assuming Higher Ed to use the personal services model contract, information technology model contract, and interagency agreement. Our agency does use the model interagency agreement, however, for other contracts if we don't have a waived contract we use our model contract. I would like to request a change to this policy that states for any agency that has a waiver for the risk based approach review that we also have a waiver of using these and this policy. As we have our own models, it's kind of tried and tested and we have some of our own language in there. And we modify it, depending on a particular situation. I think that's it on my comments.

Thank you for your comments. Your comments are a part of the record of this hearing, and will be considered as part of the fiscal rule adoption process. Any other comments at this time?

I would like to talk about 5-1, can we do that now?

Yea, if you would address your comments, if its 2-2, 3-1, 5-1 in that order, when commenting at the time.

Ralph Brown, Colorado School of Mines. These are probably more questions of clarification hopefully, rather than, I guess specific questions about policy adoption. So you'll have to tell me if I can ask one of these questions or not. Under the 3-1 vendor agreements policy, specifically universities subcontract or issue awards to like National Renewable Energy Laboratories or National Institutes of Standards and Technology, it appears that we could use their form agreement, the vendor agreement. I'm speaking about sponsored projects policy too, in lieu of the FDP form or a approved contract, approved by the university council or state controller, is that true?

Yes, I'll let Bob answer that one.

Yes that's true.

Ok good. The other question was around the statutory violation policy, it's a question that we brought up specifically from the Colorado School of Mines that the Federal Grant Sub-Recipient contract policy extends an exception to subcontracts under federal grants but that same exception is not extended to non-federal or private industry type of research funding. I was just wondering if there is any discussion about that. Like I said, this may not be a question that you can answer today or not. Maybe it's off line.

That's a good point. So we'll take a look at that.

That's fine. And then under advance payments I just wanted to confirm that under advance payments, when there is a federal grant or contract or an interagency agreement, the state controller delegate has the authority to authorize advance payments under a sponsored project type of arrangement as opposed to the state controller's office?

That depends. We'll take a look at that issue as well.

Ok. It's similar to when you're dealing with the government, like an inroll or nist, where they want their work to be advanced because they don't work under a cost reversible situation.

That may be a specific situational issue that we look at as part of a rule making process.

Ok. Thank you.

Thank you for your comments. Your comments are a part of the record of this hearing, and will be considered as part of the fiscal rule adoption process.

There may be some confusion. Whatever rule, any of the three rules are up for comment, please do so.

Mike Coulter, part of the Colorado Department of Revenue, as a revenue agent and our group travels a significant amount of time. Out of state and both in state and we make a significant amount of audit adjustments for the tax payers of Colorado and I already submitted this to your section but it wasn't included in these comments. I did an estimated lost revenue calculation for the time spent that we, in field audit alone, spend time on filling out receipts for meals. I projected, and again I'm an accountant, and you know numbers can be adjusted accordingly but, I came up with an estimate of between 1.2 and 2.5 million dollars in lost revenue. That is, we didn't spend time working on our audits, making audit adjustments for the tax payers because last year, as a public record, we made 101 million dollars in audit adjustments. I projected we lost revenue of between 1.2 and 2.5 depending on how you calculate it. Again that's an estimate. I don't know the precise dollar amount because we were busy spending time billing out receipts, making copies of receipts. We had situations where there was limitations of 20% for tips for meals. We had all sorts of complicated Excel spreadsheets showing overages and shortages on tips, \$.02 over, \$.05 under. And the bottom line, like I said, was between 1.2 and 2.5 million and I appreciate the fact that you guys have decided to not require receipts on meals. And it wasn't on my record here, but it was on an earlier memo, my brother works for Wal-mart, and even Wal-mart doesn't require employees on routine travel to keep receipts. So, I hate to ever point to Wal-mart for any shining light for guiding state government but everyone would agree that they seem to know how to be cost effective. And also, the state of Minnesota's University library system dropped the requirement for meal receipts. They felt it wasn't cost effective. And I'm glad that you included my recent comments. Again the thing that I would hope you are, cause I would assume that you are going to change some minor wording here, is think about the employees. Because if you clarify, for example on the incidental expense portion, if you clarify that receipts are not required then there will be less dissention and less discussion and less review over this whole travel situation. I mean I can just point to revenue for example, every time we turned in a travel voucher, an expense report for traveling, we have five different people reviewing everyone of those meal receipts and at the same time we had other things going on, right now it's adding up to 11. million dollars and counting. The business of revenue is to monitor money going in and money going out and other things going on, and in the meantime we have five different managers looking at our travel receipts, rather than looking at the big dollars. And so let the record clearly show that there were other things going on at revenue when we had all these managers focusing on these expenses. So, that's about it. Thank you.

Thank you for your comments. Your comments are a part of the record of this hearing, and will be considered as part of the fiscal rule adoption process.

My name is Elaine and I'm from Metro State College of Denver and I want to go on record as saying I'm totally in agree-ance with going back to the per diem because it is a lot of work. I actually spent more on trying to check those things than we really should. I want some clarification on the prepayment part of this where it's saying that there is no reconciliation required. I'm not really sure what is being said. Could somebody clarify that for me?

I will try to. If the prepayment that you made is limited to the per diem only, there were no other travel expenses on that trip, than there would be no reconciliation required assuming that the trip was the same length of time and same place.

Thank you I needed some clarification on that because I was thinking no reconciliation. What do you mean no reconciliation?

If something changes in that trip, there are additional expenses, then a reconciliation will be required.

I don't think that it's necessarily clear that if it's per diem only. At least I didn't read that in that. Maybe we could get some wording that would put that in there, because no reconciliation to me was for the whole trip. You know, if nothing changed on the whole trip then you wouldn't do a reconciliation but if they get prepayment, is prepayments only limited to per diem or is it broader than that?

Obviously there is some confusion about that intent. In fact, we may look at the wording of that particular part of the rule. 99.9% of the time if the prepayment occurs the intent was -----?. Apparently from comments received that is not clear.

Cause this is what I am seeing in this, and that is prepayment could be a person could pay their registration, they're going to get that upfront. They are going to get that as a prepayment. A person could pay their hotel, they can get that. So it's not specially just for per diem that I see and I think a reconciliation should be required for those things in my experience.

And receipts.

Except for per diem.

Expect for meals and miscellaneous per diem.

There you go. Thank you.

I'm sorry we just got your first name only, what was your last name again?

Elaine Beck.

Beck. Ok, thank you. Any other comments?

Can I come up again?

Yes.

Is there any chance that the 5.1 portion on the fiscal rule changes could be made earlier than the others? Do they have to be done in a basket?

They do not have to be done in a basket. The rule stands separate in the long bill. They can be adopted or not adopted or changed independently of each other.

Because it was just my humble observations that it seemed like there were a lot more complicated potential legal issues on some of those other fiscal rules and a lot more complex. Maybe I'm wrong but my own inherit bias, it just seems like the 5.1 would be, perhaps you could you know, expedite it. Make it take effect a little sooner.

Since this is a public hearing and we're receiving comments from the public I'm going to comment myself one way or the other but I'm open to the suggestion.

Thank you.

Could you just re-state your name?

Mike Coulter, Colorado Department of Revenue and Field Audit.

I'm Don Rieck with Public Health and Environment. This is a rather minor point, and I won't touch on some of the others because they have all been adequately covered. We struggled with trying to differentiate incidental per diem expenses from the other allowable business expenses. And the closest we could come, but we still struggled with that, particularly with the use of the word tips in both areas is what threw us the curve. Is whether the incidental per diem was intended to cover what I'll call personal expenses that you might now otherwise have if you weren't out of town. But I'm not sure that adds much clarity to the debate or not, but we may be asking to much for that kind of clarity. But in any case, the other thing might be some freedom for agencies to define themselves what incidental per diem is because personally one that we would put in there is that we would include maid tips because we've seen issues of such a minor item and the dollars involved floating all over the place, anywhere from \$2. The most aggregious one I think we've seen was for \$5 for Montrose Colorado for a maid tip. So to the extent that any clarity can come between those two categories might be helpful.

Thank you for your comments. Your comments are a part of the record of this hearing, and will be considered as part of the fiscal rule adoption process.

Anyone else? Well, seeing no one else. Thank you for your participation in the rule making process for the State Fiscal Rules. Your comments, those verbal and written, are a part of the record of this hearing, and will be considered as part of the fiscal rule adoption process. Seeing no other persons who are interesting in making comments, I'm not prepared to render a decision on the adoption of these rule at this time. I need time to properly consider the comments presented today. I declare this hearing on the State Fiscal Rules is hereby concluded.