

2020

Analysis of Noncompliance with Rules REPORT

January 1, 2019 – December 31, 2019



COLORADO

Department of Public Safety

Executive Director's Office

Analysis of Noncompliance of Rules in CDPS

Pursuant to 24-4-104.6, CRS, The Department of Public Safety (CDPS) submits the following 2020 analysis of noncompliance with rules report. Many rules in CDPS do not have a compliance element to track and analyze according to the provisions of 24-4-104.6, CRS. These include the rules describing the format for applying for various grant funding programs and the alert programs administered by CBI.

One unique set of rules promulgated for the Colorado Auto Theft Prevention Authority (CATPA) within CDPS includes a compliance aspect, however a different agency administers enforcement action for instances of non-compliance. CATPA gives notice and opportunity to cure violations to all non-compliant business partners before CATPA passes instances of non-compliance to the enforcing agency. CATPA does not have data for the enforcement actions of the other agency.

For rules where CDPS has compliance enforcement authority, CDPS balances the importance of maintaining public safety with providing education and flexibility to the regulated parties. See the below table for a summary, with detailed descriptions following.

	Frequency of non-compliance	Amount of fines generated	Given opportunity to cure a minor violation
CATPA			
8 CCR 1507-50	CATPA does not have enforcement authority.		100%
CBI			
8 CCR 1507-20, 21, 23, 26, 27, 29, 33	There is no applicable compliance aspect in the rules.		
CSP			
8 CCR 1507-1, 25, 28 Rules regarding operation of commercial motor vehicles and transportation of hazardous materials	27,887 of 51,586 inspections reported violations of commercial vehicle rules (54%).	72 out of 175 (41%) compliance reviews resulted in civil penalties (61 civil penalties under federal regulations and 11 civil penalties under state regulations).	Of 27,887 inspections with violations, 19,069 were informed about the violation and remained in operation (68%).
8 CCR 1507-56	10 instances of non-compliance.	None.	All 10 instances of non-compliance were given instructions and an opportunity to cure the violation. Four instances (1 vendor and 3 employees of that vendor) were unable to cure, resulting in decertification.

8 CCR 1507-58	New in 2020, not yet analyzed.		
8 CCR 1507-22	There is no applicable compliance aspect in the rules.		
DFPC			
8 CCR 1507-11, 12, 30, 31, 52, 53, 57, 101	22 instances of non-compliance in FY 19/20	No fines were issued.	22/22 instances of non-compliance received a notice, warning, and/or training, with no further enforcement action. (100%)
8 CCR 1507- 32	These rules have not been analyzed for noncompliance.		
8 CCR 1507-3, 34, 35	There is no applicable compliance aspect in the rules.		
DHSEM			
8 CCR 1507-40, 41, 42, 43, 44, 45, 46	There is no applicable compliance aspect in the rules.		

Colorado Automobile Theft Prevention Authority

The Colorado Automobile Theft Prevention Authority (CATPA) promulgates one set of rules regarding their operations, 8 CCR 1507-50. While CATPA provides warning and opportunity to cure for noncompliance, another agency is actually the enforcement authority for the rules. CATPA is authorized under 10-4-617, CRS to collect revenues from insurance companies licensed in the State. In accordance with 10-4-617, CRS, CATPA identifies non-compliant insurance companies on or before February of each year. CATPA will attempt to gain compliance with applicable insurance companies by contacting the insurance companies via email and phone call. Upon non-compliance, CATPA will then provide a report of non-compliance to the Department of Regulatory Agencies (DORA) Commissioner of Insurance, fulfilling obligations under 10-4-617(2), CRS. Typically, the Commissioner provides formal notification to each non-compliant insurance company. In the event an insurance company fails to comply with the provisions of 10-4-167, CRS, the Commissioner of Insurance has the authority to revoke or otherwise suspend the licensing of the insurance company within Colorado. In short, CATPA does not perform 'compliance' or otherwise enforce regulations for compliance, but merely assists in reporting non-compliance to DORA.

Colorado Bureau of Investigation

The Colorado Bureau of Investigation (CBI) promulgates four rules describing the process to initiate alert programs: 8 CCR 1507-23, 8 CCR 1507-26, 8 CCR 1507-27, and 8 CCR 1507-33 regarding AMBER Alert, Missing Senior Citizen or Person with Developmental Disabilities Alert, Blue Alert, and Medina Alert. Other rules promulgated by CBI include 8 CCR 1507-20, the National Instant Criminal Background Check System, 8 CCR 1507-21, Criminal History Records of Volunteers and Employees of Charitable Organizations, and 8 CCR 1507-29, Evidence Collection in Connection with Sexual Assaults. The CBI's rules are specific to the compliance of CBI processes and procedures. Each of the CBI rules currently

govern the delivery of a service, program or process delivered to stakeholders by the CBI. At this time there is no reciprocal responsibility for stakeholders to comply with CBI rules. Therefore, there have been no instances or noncompliance during this review period.

Colorado State Patrol

The Colorado State Patrol (hereafter “CSP”) promulgates rules to support the state of Colorado MOST, Third-Party CMV VIN, MCSAP, POE and HM programs and in support of state compliance with federal vehicle size, weight, safety, and hazardous, nuclear regulations and intrastate agricultural transport, grant requirements, national standards, and approved instructional or certification curriculum.

Of any of the rules adopted by the CSP, the rules most frequently violated by the population regulated thereby are the vehicles making up what is internally referred to as the “CMV Rules Suite”- the MCSAP, HM and POE Rules. These rules are published in the Colorado Code of Regulations as:

- 8 CCR 1507-1: Rules and Regulations Concerning the Minimum Standards for Operation of Commercial Vehicles
- 8 CCR 1507-25: Rules and Regulations Concerning the Permitting, Routing, and Transportation of Hazardous and Nuclear Materials and Intrastate Transport of Agricultural Products
- 8 CCR 1507-28: Port of Entry Rules for Commercial Motor Carrier Size, Weight and Clearance

Since the rules most frequently violated are the three listed immediately above, this analysis will focus more on violations by CMV carriers, operators and drivers (hereafter collectively referred to as “CMVs”). The Third-Party Commercial Vehicle VIN Program Rules were only recently adopted in August of 2020 and their predecessor, the Pilot VIN Program Rules, were repealed pursuant to statute, effective January 1, 2020. In the short 3-year run of the pilot program, no violations of the rules by either Transportation Associations or Organizations or independent Employee Verifiers were discovered or recorded. The CATPA rules, 8 CCR 1507-50, are addressed separately in this report, but also fall under the agency umbrella of the CSP. The remaining rules managed by the CSP for the Motorcycle Operator Safety Training (MOST) Program, will be discussed very briefly as they have been in effect the entirety of CY2019 and have had the opportunity for regulatory activity to occur between the CSP and the regulated population.

MCSAP, POE and HM CMV Regulation and Rules Compliance: Digging In

Troopers and Officers of the CSP are sufficiently trained and expected to use their discretion when addressing statutory and rules violations by CMVs in order to bring about the best overall results of increased compliance, operator knowledge, and traffic safety. More often than not, CSP Troopers, Officers and the professional staff supporting each view violations of adopted rules by CMVs to be opportunities for communication, whereby CMVs can receive critical information necessary to improve, continue or maintain necessary compliance with the rules so as not to operate out of compliance and potentially accumulate additional or similar violations that contribute to enhanced penalties or long-term damage to a CMVs safety rating within the regulated community with the FMCSA. Accumulation of additional or similar violations may ultimately lead to the assignment of a Compliance Review (CR) for a CMV to a CSP Trooper Inspector, potentially resulting in the assessment of a Civil Penalty. CMVs rarely

proceed directly to a CR or immediately receive a civil penalty for violations, however- several opportunities are typically available to a CMV to make corrections and receive support before significant penalties having long-term consequences are assessed for noncompliance.

A total of 51,586 roadside inspections were completed on CMVs in Colorado in CY2019. Of the 51,586 inspections completed, 51,319 were actually completed by members of Colorado law enforcement, with the remaining inspections completed by Federal FMCSA Compliance Investigators and Officers operating within the state of Colorado. Regardless, the majority of the total inspections completed were performed by members of the CSP.

Of the 51,319 roadside inspections completed by Colorado law enforcement members, 23,432 of these inspections were completed without noting any violations. The remaining 27,887 roadside inspections indicated at least one violation, with 8,818 of these inspections being Out-of-Service ("OSS") violations. Consequently, despite finding probable cause to perform a roadside inspection for each of the 51,319 inspections completed by Colorado law enforcement, Officers and Troopers formally identified and recorded behavior or circumstances violated applicable rules, regulations and statutes approximately 54% of the time. Including the additional Colorado roadside inspections completed by federal officers, the total number of inspections with identified violations only increased to 28,023- leaving the percentage of inspections having noted violations at 54% for all roadside inspections completed in Colorado overall.

All inspections completed in Colorado are uploaded to the FMCSA Motor Carrier Information Management System (MCMIS). This information feeds other databases being relied upon for this analysis as well as for identification and assignment of CMVs for CRs. The results of CRs influence the assessment of civil penalties upon CMVs. Similar to inspection violations identified and noted roadside, the assessment of civil penalties against CMVs for failure to comply with applicable rules, regulations and statutes is tempered through the investigation of mitigating activity by the CMV, negotiation between the CMV and CSP of investigatory findings, and in the development and management of safety action plans to facilitate the rehabilitation or development of a CMVs to perform successfully and legally.

First and foremost, CRs are not completed on CMVs without a pattern of noncompliance or the occurrence of a fatal traffic incident- in other words, the acceptable behavior threshold must be exceeded and exceeding that threshold requires multiple infractions or the occurrence of traumatic and fatal events. A total of 175 CRs were completed during CY2019; of these 175 CRs, 72 -(41.15%) - resulted in the assessment of civil penalties. And, with respect to these civil penalty assessments, CMVs were given full due process, including the ability to appeal the findings of the CR, to present mitigating information or progress against a safety plan in exchange for consideration to waive part or all of an assessment, the ability to request a new review to recognize efforts to improve or correct by the CMV, reasonable monthly repayment planning and opportunities to cure noncompliance with the terms and conditions of a civil penalty assessment prior to information for the CMV being forwarded to the Colorado DOR for vehicle registration revocation. Ultimately the goal of a CR is not the assessment of a civil penalty, nor is the goal of a civil penalty assessment merely the payment of a fine. The goals are to

engage the CMV, to share important information relevant to CMV operations and equipment requirements, to develop trust and promote compliance and safety amongst the regulated population, refraining from penalization or punitive action against a CMV unless absolutely necessary.

CSP prefers to work with CMVs prior to circumstances which trigger the need to conduct a CR against one. With respect to interstate CMVs, the CSP is fully supported in this desire to do so. Interstate CMVs are required to attend and complete a Safety Audit (SA) within the first 18 months of operation. This requirement cannot be waived and failure to attend or complete a SA results in the assignment of a CR and potentially the deactivation of an interstate USDOT# by the FMCSA. The state of Colorado does not have a similar authority to deactivate an intrastate USDOT#, but does have the ability to forward information on a CMV to the Colorado DOR for failure to comply with a civil penalty assessment. During CY2019, the CSP completed 521 SAs. These reflect 521 educational and informational opportunities between CMVs and appropriately trained CSP Troopers and Officers, absent the threat of direct enforcement for violations of applicable rules, regulations and statutes. SA's allow CMVs to receive additional information and receive specific details necessary to promote their effective and safe operations. They also provide a way for law enforcement to feel confident that new CMVs are aware of their responsibilities and obligations, ensuring that lack of knowledge or the opportunity to obtain knowledge are not grounds for future noncompliance.

Due to limited funding, and FTE, the CSP is unable to maintain a similarly robust SA program focusing on intrastate CMVs. Instead, not wanting to ignore the same needs for knowledge and support of intrastate CMVs, the CSP is available to provide safety education talks and demonstrations at no cost and without threat of enforcement arising out of doing so for an intrastate CMV. Hundreds of these safety talks were given by CSP Troopers, POE Officers and members of local law enforcement operating pursuant to Memorandums of Understanding (MOUs) between their agencies and the CSP.

Most Common CMV Violations

Violations of rules applicable to CMVs can span a wide range of behavior, equipment and statutory offenses set forth in statute and adopted as rules by the state of Colorado. It is therefore difficult to identify the most common violations occurring without recognizing the significance of and addressing each of these categories. Doing so recognizes that enforcement of these rules requires an understanding that violations may occur that are the result of operator behavior, equipment maintenance, or failure to comply with technical specialty requirements, like routing or placarding.

Most Common CMV Violations- Driver Violations

In the 51,319 roadside inspections completed by Colorado law enforcement during CY2019, 27,216 driver-related violations were identified in the 50,962 inspections noted as focusing upon driver-related violations of applicable rules, regulations and laws. Of this 27,216, 5,066 of the violations resulted in the placing of a driver Out-of-Service ("OOS"). The top 10 Driver Violations identified in roadside inspection reports appear in Table 1.

Table 1:

2020 Noncompliance with Rules

Viol. Code	Viol. Description	# of Insp.	# of Viol.	% of Total Viol.	# OOS Viol.	OOS %
395.8	Record of Duty Status (general form & manner)	1,945	2,844	10.45%	6	.21%
395.8E	False Report of Driver's Record of Duty Status	1,298	1,884	6.92%	1,054	55.94%
395.24C2III	Driver failed to manually add shipping document #	1,046	1,664	6.11%	0	0%
383.23A2	Operating a CMV without a CDL	1,365	1,365	5.02%	1,358	99.49%
392.16	Failing to use seat belt while operating a CMV	1,318	1,327	4.88%	0	0%
392.2SLLS2	State/Local Laws- Speeding 6-10 miles/hour over the speed limit	1,030	1,031	3.79%	0	0%
395.22H3	Driver failed to maintain instruction sheet for ELD malfunction reptg. reqs.	935	938	3.45%	0	0%
395.8AELD	ELD- No record of duty status (ELD reqd.)	894	919	3.38%	771	83.90%
395.30B1	Driver failed to certify the accuracy of info. gathered by the ELD	522	835	3.07%	0	0%
395.24C2II	Driver failed to manually add the trailer number	508	823	3.02%	0	0%

This information made available to the State of Colorado from the FMCSA A & I online system, October 16, 2020.

Please note that the top two violations have to deal with the behavior of a driver in either not understanding how to properly record or deliberately failing to record hours of service (HOS) or driver activity information correctly. The third most often of the violations listed has to do with one of the recently effective ELD requirements upon drivers. Where the violations resulted in an OOS determination, this emphasis shifts and rightly so- the top OOS violation is for failure to have a CDL to operate a CMV. Given the risk to public safety the lack of proper licensure may represent, it is appropriate that the failure to have it results in an OOS violation.

Most Common Rule Violations- Vehicle Violations

Equipment violations are distinct from driver violations in that equipment violations focus more on the function of the vehicle and its included equipment and less on the behavior or action of the individual operating it. These violations are just as important, however, as commercial vehicles operated by CMVs must satisfy specific vehicle safety requirements.

Vehicle violations include violations for ineffective/inoperative brakes, inoperative/insufficient lighting, vision impediment, cargo securement, and tire integrity. Each of these vehicle violations, among others, affect the safe operation of all vehicles on highways throughout the state. In the 51,319 roadside inspections completed by Colorado law enforcement personnel, 20,867 are identified as vehicle-focused

roadside inspections. Overall, 44,034 vehicle violations of applicable rules, regulations and laws, with 8,885 of the violations being significant enough to designate the vehicle OOS, were identified and recorded in roadside inspections throughout CY2019. The top 10 vehicle violations appear in Table 2:

Table 2:

Viol. Code	Viol. Description	# of Insp.	# of Viol.	% of Total Viol.	# OOS Viol.	OOS %
396.17C	Operating a CMV w/o proof of periodic insp.	4,657	6,254	14.20%	3	.05%
393.9	Inop. Req'd. lamp	2,495	2,932	6.66%	157	5.35%
393.47E	Clamp or Roto-type brake Out-of-Adjustment	1,400	2,198	4.99%	2	.09%
393.95A	No/Discharged/Unsec'd. fire extinguisher	2,115	2,116	4.81%	1	.05%
393.9TS	Inop. Turn Signal	1,221	1,357	3.08%	552	40.68%
393.53B	CMV manuf. After 10/19/94 has auto airbrake adjust. System failing to compensate for wear	1,196	1,276	2.90%	0	0%
393.95F	No/Insuff. Warning Devices	1,227	1,227	2.79%	1	.08%
393.43	No/Improper breakaway braking	1,093	1,126	2.56%	1,051	93.34%
393.78	Windshield Wiper Inop./defective	1,003	1,006	2.28%	10	.99%
393.75C	Tires-Other: Tread Depth less than 2/32" measured in a major tread groove	746	956	2.17%	32	3.35%

This information made available to the State of Colorado from the FMCSA A & I online system, October 16, 2020.

Again, please notice that the most common vehicle-related inspection violation has to do with documentation. With the second and third-most violations, lighting and brake violations come into play, both presenting serious issues to the safe operation of a commercial vehicle. With the exception of fourth and sixth-most common violations, the remaining violations identified as part of the top ten 10 vehicle violations all involve braking, vision and tires.

Most Common Rule Violations: HM Rule Violations

HM-related violations are not only a subset of CMV rule violations- HM-related violations may be applicable against non-commercial entities and persons who engage in the transport of specific classes

of hazardous materials in specified amounts. Consequently, citations for HM-related violations may be assessed for the incorrect transport of HM, Nuclear or agricultural products within the state of Colorado regardless of the existence of commercial carrier or operator status. Moreover, HM-violations may trigger additional violations, particularly driver-related violations due to the requirement that individuals transporting placarded amounts of HM are required to have, at minimum, a Class C CDL bearing a HM endorsement.

Of the previously discussed 51,319 roadside inspections completed by Colorado law enforcement personnel upon CMVs during CY2019, 2,698 were specifically identified as hazardous materials roadside inspections with 765 violations of applicable hazardous materials rules, regulations and laws. Of the 765 violations identified, 155 were determined to meet the criteria necessary to place a vehicle and/or driver OOS. Table 3 summarizes the top 10 HM violations identified and recorded against CMVs in roadside inspection reports by Colorado law enforcement personnel.

Table 3:

Viol. Code	Viol. Description	# of Insp.	# of Viol.	% of Total Viol.	# OOS Viol.	OOS %
172.516C6	Placard Damaged, Deteriorated or Obscured	58	70	9.15%	1	1.43%
172.504A	Vehicle not Placarded as Required	50	55	7.19%	36	65.45%
180.415B	Cargo Tank Test or Inspection Markings	37	53	6.93%	0	0%
397.67	HM Vehicle Routing Violation (non RAM)	46	46	6.01%	0	0%
177.834A	Package Not Secure in Vehicle	38	40	5.23%	38	95%
172.602C1	Maintenance/Accessibility of Emer. Response Info.	26	26	3.40%	0	0%
172.620B	No Copy of USDOT HM Registration Number	26	26	3.40%	0	0%
172.600C	Offer or Transport w/o Emer. Response Info.	23	23	3.01%	0	0%
180.407A	Failure to Test/ Insp. of a Specification Cargo Tank When Due	17	22	2.88%	0	0%
177.817A	No/Improper Shipping Papers (Carrier)	22	22	2.88%	17	77.27%

This information made available to the State of Colorado from the FMCSA A & I online system, October 16, 2020.

Although the number one most common HM violation does not directly involve documentation completed by a driver of a CMV, it does involve “documentation” required to be displayed to give notice to first responders and, to some extent, the general public, about what hazardous or nuclear materials a vehicle may be transporting. The second most common violations similarly follow suit, specifically applying to the condition of this “documentation.” Finally, the third most common HM-related violation

identified and reported by Colorado law enforcement personnel during CY2019 also has to do with either the completion of or accurate documentation of required inspection testing of equipment designed to transport HM. Consequently, there are essentially two driver-behavior or knowledge-related HM violations and one HM-related vehicle equipment violation. More often than not, the top 10 HM-related violations assessed during CY2019 by Colorado law enforcement personnel reflect violations where the remedy for the violation is well-within the scope of influence of the driver or operator of the vehicle. Only three of the top 10 violations reflect circumstances potentially outside the scope of a driver to influence or to have responsibility for verification and knowledge of.

Up until now, violations for size and weight, arguably some of the most closely monitored by the CSP which has an entire branch dedicated to the enforcement of size and weight rules and regulations, have not had an opportunity to be properly addressed. This is because these violations generally fall within a miscellaneous category as cataloged by the FMCSA. We will next turn our attention to these and other miscellaneous violations identified by Colorado law enforcement personnel during CY2019.

Most Common Rule Violations: Miscellaneous/Other Rule Violations

Recognized within the FMCSA A & I online database as “Other or Miscellaneous Violations,” these violations reflect both vehicle and driver-related violations which can be directly tied to federal requirements affecting size and weight of commercial vehicles, violations of other state laws, and administrative obligations related to IRP, registration, or biennial update of USDOT information as required by the FMCSRs.

Out of the 51,319 inspections completed by Colorado law enforcement personnel during CY2019, 11,338 focused on miscellaneous or Other violations not already identified as Driver, Vehicle or HM Violations. During CY2019, 11,812 total miscellaneous or other violations of applicable rules, regulations and laws to CMVs were recorded in roadside inspections completed. Table 4 details the top 10 Miscellaneous or Other CMV violations.

Table 4:

Viol. Code	Viol. Description	# of Insp.	# of Viol.	% of Total Viol.	# OOS Viol.	OOS %
392.2MI	Misc. Traffic Law Viol.	2,116	2,198	18.61%	6	.27%
390.21B	Carrier Name and/or USDOT# Not Displayed as Req'd.	1,803	1,812	15.34%	1	.06%
392.2RG	State Vehicle Reg. or License Plate Viol.	1,341	1,475	12.49%	1	.07%
392.2	Violation of Local Laws- Explain:	793	872	7.38%	8	.92%
392.2IRP	IRP Apportioned Tag or Reg. Viol.	775	831	7.04%	0	0%
392.2SLEWA1	State/Local laws- Excess. Weight- 1-2500 Over on an Axle/Axle Groups	495	571	4.83%	0	0%

392.2IN	State Insurance Violation	405	406	3.44%	0	0%
390.19B2BIENNIAL	Motor Carrier Failed to File Biennial FMCSA Reg. Update as Req'd.	363	363	3.07%	2	.55%
390.21A	Not Marked in Accordance w/ Regs.	351	352	2.98%	0	0%
392.2SLEWG3	State/Local Laws- Excess. Weight- More Than 5000 lbs. Over on Allowable Gross Weight	328	330	2.79%	2	.61%

As evidenced by the types of violations making up the category of miscellaneous violations, the majority of these violations also involve the behavior of and issues that are within the scope of influence of a CMV driver or operator. Those not within the scope of influence of a driver or operator reveal administrative obligations of the carrier entity that are to be completed to maintain its specific status with the FMCSA and IRP, and potentially affect the operations of a CMV overall, not just the operation of a single vehicle by a single driver on behalf of a CMV.

Civil Penalties- When CMVs Non-Compliance Results in Enhanced Penalty Enforcement or Assessment

Presently, the CSP does not specifically evaluate how often a specific violation is recorded, cited or assessed against CMVs or against a specific CMV for general document-tracking purposes. While this type of review can be and is performed in response to requests for information for specific CMVs or in response to preparation for a special enforcement operation focusing on a group of violations (i.e., brakes), the decision to assign a CR for a CMV more often than not relies upon the nature of the violations rather than just the quantity thereof. Although they regularly do not, CRs can result in the assessment of a civil penalty upon a CMV, the ultimate corrective action that may be issued to a CMV short of revocation of an interstate USDOT number by the FMCSA or revocation of vehicle registration for an intrastate CMV determined to not be compliant with the terms of an assessed civil penalty.

A CMV may have hundreds of inspections and have several violations identified by law enforcement personnel completing inspections upon them over the course of many years. Compared to CRs, these identifications of violations by law enforcement personnel of behavior or operations inconsistent with applicable rule, regulations and statutes are educational tools, having minor consequences in comparison to the sanctions, financial penalties, and extended reputational damage impacting other areas of CMVs business operations that a negative CR and subsequent civil penalty can inflict.

The decision to assign and require a CMV to submit to a CR is not one reached insignificantly. Rather, typically the decision to complete a CR upon a CMV is only reached following repeated violations evidencing a pattern of noncompliance with applicable rules, regulations and statutes or the occurrence of a fatal traffic incident involving the CMV. The completion of a CR is not optional, but may result in a finding that the CMV is either Conditional or Satisfactory instead of Unsatisfactory once all facts are considered.

With respect to intrastate CMVs contacted for CRs by the CSP, the CSP has adopted rules directing the calculation, assessment, appeal, treatment and management of a civil penalty assessment resulting from a CR. These rules affecting the treatment of civil penalties assessed against intrastate CMVs are guided by similar provisions applicable to interstate CMVs receiving civil penalty assessments from the FMCSA, with one important difference. The FMCSA has the authority to revoke and invalidate an interstate USDOT# issued to an interstate CMV. State law does not provide for a similar authority to revoke or invalidate the USDOT# of an intrastate CMV; instead state law provides that the CSP may forward information to the Colorado DOR when an intrastate carrier fails to remain compliant or in good standing with the terms and conditions of a civil penalty assessment, either failing to pay or failing to pay according to an established payment plan. Statute provides that information regarding a noncompliant CMV forwarded to the Colorado DOR may be used to revoke the registrations of vehicles registered by the CMV identified. While not a revocation of a USDOT#, the revocation of vehicle registrations also removes the authority of a CMV to continue operations, at least with the vehicles it has registered to it at the time of its noncompliance with the civil penalty program.

During CY2019, the CSP completed a total of 175 CRs, with 72 resulting in civil penalty assessments. Of this number, 61 civil penalties resulted out of federally assigned CRs and 11 civil penalties resulted out of intrastate CRs. Taking the group as a whole, CRs performed by the CSP upon interstate and intrastate CMVs resulted in civil penalties less than 50% of the time- approximately 41% of the time to be more precise. Approximately 59% of the time, CMVs received CRs resulting in satisfactory ratings without any penalty assessments. This is more due to the efforts of the CSP to be collaborative and education in their approach performing CRs, honoring both state and federal efforts to be courteous but firm in the in the completion of CRs and promotion of CMV education and overall compliance.

When performing CRs and in the processes that may follow thereafter, the CSP continues to approach resolution of issues identified in CRs and that become the basis of civil penalties against carriers from a position of collaboration, cooperation, education and promotion of safe and efficient operation. Throughout a CR and any subsequent civil penalty assessment resulting therefrom, CSP personnel emphasize and encourage CMVs to engage in conversation and collaborative approaches to resolve compliance issues affecting the legal operations of a CMV. CMVs may request additional guidance, review, consideration of remedial efforts towards fine reduction, reassessment of operations and negotiation of reasonable civil penalty fine payment schedules so as to promote effective compliance and support operation of commerce in Colorado. The CSP does this not only because its focus is on safety and not revenue, but in an effort to reconcile statutory inconsistencies affecting the assessment of civil penalties to CMV by itself and partnering agencies like the PUC.

Currently, state statute freezes the rates of fines the CSP may apply for violations committed by a CMV identified through a CR to a penalty schedule set forth in 2001. These rates are less than those that appear in more current versions of the same penalty schedule, including that schedule presently adopted by the Colorado Public Utilities Commission (PUC). This dichotomy creates a dissonance between the two regulating agencies, especially where the same CMV is potentially subject to penalty assessments from both the CSP and PUC. Due to the lower overall financial sanctions the CSP is able to assess, CMVs may attempt to “forum shop” which agency reviews their operations and issues fines in

response thereto. This leads to a conflict between the agencies that will continue to exist until the state statutes no longer support this inconsistent fine structuring.

Colorado MOST Program- Compliance Information in Brief

The CSP received the Colorado MOST Program from the Colorado DOT as a result of statutory assignment arising out of the 2017 legislative cycle and adopted the rules and regulations necessary to administer the program through the CSP in 2018. The rules only being recently adopted in CY2018 did not lend itself to a review of compliance therewith for CY2018.

With respect to CY2019, the newly adopted rules have been in effect for over a year so it is much more reasonable to assess compliance with these rules. As of CY2019, approximately 95% of all participating MOST Instructors and Vendors are following all applicable rules, regulations and statutes for the MOST Program. In the past CY, a total of four MOST Vendor violations and eight MOST Instructor violations were identified. Approximately 98% of the MOST Vendors and Instructors found to have violations corrected their violations of applicable rules, regulations and statutes.

Most notably, over the past two years of the MOST Program's residence within the CSP, 80 reviews of MOST Vendors and Instructors have been completed. Arising out of these reviews, only one MOST Vendor and three MOST Instructors (all working for the one Vendor) have lost their certifications to either instruct or act as a vendor for the MOST Program.

Division of Fire Prevention and Control

The Division of Fire Prevention and Control (DFPC) promulgates two sets of rules that do not have a compliance enforcement aspect: Local Firefighter Safety and Disease Prevention Fund (8 CCR 1507-34) and Death Benefits for Seasonal Wildland Firefighters (8 CCR 1507-35). Two additional sets of rules have not been analyzed for non-compliance: Firefighter and Hazardous Materials Responders Voluntary Certification Programs (8 CCR 1507-3), and Prescribed Burning in Colorado (8 CCR 1507-32).

Noncompliance related to DFPC's fire and life safety programs general rule (8 CCR 1507-101) is captured under the six individual fire and life safety program rules discussed below.

For the rules that have the most frequent instances of non-compliance, DFPC primarily issues warnings and provides training in cases of rule non-compliance. Further enforcement occurs with parties that understand the rules but failed to follow them.

Fire Suppression Program (8 CCR 1507-11)

We had 8 instances of reported noncompliance that were substantiated in the 19/20 FY. Six instances resulted in a warning and none of the instances involved fines. The majority of these instances involved an individual or company that failed to fully understand the rules and DFPC provided education at the time of the violation to help ensure the violation would not re-occur.

Persons Dealing with Fireworks (8 CCR 1507-12)

We had 4 instances of noncompliance that were discovered in the 19/20 FY. The local Sheriff's Office confiscated non-permissible fireworks at the fireworks stand all 4 instances. One stand was temporarily shut down until they were brought back into compliance. The local law enforcement officials have the ability to write a citation where non-permissible fireworks are discovered. Our understanding is that a citation was written in one of these cases, but was subsequently dropped by the local District Attorney. None of the instances resulted in fines.

Fire Code Enforcement and Certification of Fire Inspectors for Public Schools, Charter Schools, and Junior Colleges (8 CCR 1507-30)

We had eight instances of reported noncompliance that were substantiated in the 19/20 FY. All resulted in either a notice of non-compliance, a notice of unsafe conditions, or in a stop work order (2 instances); none of these involved fines. All of these instances involved an individual or company that failed to fully understand the rules and DFPC provided education at the time of the violation to help ensure the violation would not re-occur.

Building, Fire, and Life Safety Code Enforcement and Certification of Inspectors for Health Facilities Licensed by the State of Colorado (8 CCR 1507-31)

No Documented Reports of noncompliance in FY 19/20.

Reduced Ignition Propensity Cigarette Standards and Certification (8 CCR 1507-52)

No Documented Reports of noncompliance in FY 19/20.

Uniform Standards and Minimum Fire and Life Safety Requirements for Waste Tire Facilities (CCR 1507-53)

We had two instances of reported noncompliance that was substantiated in the 19/20 FY. Both instance involved an individual or company that failed to fully understand the rules and DFPC provided education at the time of the violation to help ensure the violation would not re-occur. None of the instances resulted in warning or fines.

Building And Fire Code Enforcement And Certification Of Inspectors For Limited Gaming Facilities Licensed By The State Of Colorado (CCR 1507-57)

No Documented Reports of noncompliance in FY 19/20.

Division of Homeland Security and Emergency Management

The Division of Homeland Security and Emergency Management (DHSEM) has not collected statistics regarding compliance with their rules. The rules promulgated by this division do not contain penalties for non-compliance. Rather, two of the rules concern only other state agencies: Continuity of State Government Operations (8 CCR 1507-40) and Building Security and Occupant Protection (8 CCR 1507-41). The remaining other four other rules describe the process for applying for and receiving funding through various grant programs: Reserve Peace Officer Academy Grant Program (8 CCR 1507-43), School

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Access for Emergency Response Grant Program (8 CCR 1507-44), School Security Disbursement Program (8 CCR 1507-45), and Law Enforcement Public Safety and Criminal Justice Information Sharing Grant Program (8 CCR 1507-46).