DEPARTMENT OF PUBLIC SAFETY
DIVISION OF STATE PATROL

RULES AND REGULATIONS CONCERNING MINIMUM STANDARDS FOR THE OPERATION OF COMMERCIAL VEHICLES

STATEMENT OF BASIS, STATUTORY AUTHORITY, AND PURPOSE

Pursuant to §42-4-235(4) (a), CRS, the Chief of the Colorado State Patrol (CSP) has the authority to promulgate rules and regulations for the minimum standards for the operation of commercial vehicles within the State of Colorado.

Amendments are being proposed to 8 Colorado Code of Regulations 1507-1 to ensure compliance and consistency with state law and federal regulations. Specifically, these amendments incorporate the most recently promulgated Out of Service Criteria set forth by the Commercial Vehicle Safety Alliance (CVSA); pertinent sections of the October 2015 Federal Motor Carrier Safety Regulations required as a result of federal law, state law and grant requirements; clarify surge brake requirements and procedures associated with the civil penalty process; new contact information for the CSP Motor Carrier Services Section; and the correction of minor semantic and grammatical errors.

It has been declared by the General Assembly that the safe operation of commercial vehicles is a matter of statewide concern. The absence of implementing rules to carry out the purpose of the statutes would be contrary to the public health, peace, safety and welfare of the state. For these reasons, it is necessary that these proposed amendments be adopted.

_____ _____

Colonel Scott Hernandez Date of Adoption
Chief, Colorado State Patrol

DEPARTMENT OF PUBLIC SAFETY
DIVISION OF STATE PATROL

RULES AND REGULATIONS CONCERNING MINIMUM STANDARDS FOR THE OPERATION OF COMMERCIAL VEHICLES

AUTHORITY TO ADOPT STANDARDS AND SPECIFICATIONS

The Chief of the Colorado State Patrol (CSP) is authorized by the provisions of §42-4-235(4) (a), CRS, to adopt rules and regulations for safety standards and specifications for the operation of all commercial vehicles in Colorado, both in interstate and intrastate transportation.

I. APPLICABILITY

A. These rules and regulations shall apply to individuals, corporations, Colorado government or governmental subdivisions or agencies, or other legal entities who operate commercial vehicles as defined in §42-4-235(1) (a), CRS.

1. In addition to this rule, anyone who transports hazardous materials as defined in 49 CFR 171.8 §42-20-103 (3), CRS and/or nuclear materials as defined in §42-20-402 (3) (a)-(c), CRS, shall comply with the CSP Rules and Regulations Concerning the Permitting, Routing, and Safe Transportation of Hazardous and Nuclear Materials and the Intrastate Transportation of Agricultural Products in the State of Colorado found in 8 CCR 1507-25.

2. The CSP Motor Carrier Safety Section (MCSS) may consider and grant requests for temporary variance from the rules in 8 CCR 1507-1, for intrastate commercial motor carriers only, provided the variance is not in violation of §42-4-235, CRS.

3. The CSP MCSS may grant variances/waivers to drivers unable to satisfy the requirements of 49 CFR 391, Subpart E. Individual applications requesting a variance/waiver of specific requirements may be approved when the approval of the variance/waiver is based upon sound medical judgment combined with appropriate performance standards ensuring no adverse affect on safety.

II. GENERAL DEFINITIONS

A. Definitions relevant to these rules are found in Title 49 of the Code of Federal Regulations (CFR). These definitions are amended, where necessary, to conform to

the Colorado Revised Statutes (CRS). Those definitions controlled by the CRS that are applicable to these rules are referenced below:

1. **Commercial Vehicle**: The definition of commercial vehicle will be as it is set forth in §42-4-235 (1) (A), CRS.

2. **Enforcement Official**: The definition of enforcement official will be as it is set forth in §§ 16-2.5-101, 16-2.5-114, 16-2.5-115, and 16-2.5-143 and also as set forth in 42-20-103 (2), CRS.

3. **Motor Carrier**: The definition of motor carrier will be as it is set forth in §42-4-235 (C), CRS.

III. AUTHORITY TO INSPECT VEHICLES, DRIVERS, CARGO, BOOKS AND RECORDS

A. Enforcement officials, who are authorized to perform motor vehicle safety inspections on commercial motor vehicles and drivers, shall be required to meet the inspector qualifications set forth in §42-4-235(4), CRS, while performing a Level I North American Standard Safety Inspection. All enforcement officials performing Level I-VI North American Standard Safety Inspections must maintain certification requirements prescribed in the Commercial Vehicle Safety Alliance (CVSA) Operations Manual.

B. Authorized enforcement officials shall at all times have the authority to inspect commercial vehicles, commercial vehicle drivers, cargo, and any required documents, set forth in 49 CFR, Subchapter B, Parts, 387, 390, 391, 392, 393, 395, 396 and 399 CFR, as revised October 1, 2015.

C. CSP Enforcement officials who are certified by the Federal Motor Carrier Safety Administration (FMCSA) pursuant to 49 CFR 385, Subpart C to perform compliance reviews and safety audits shall have the authority to enter the facilities of and inspect any motor carrier, as defined in §42-4-235, CRS, and any required records and supporting documents, set forth in 49 CFR, Subchapter B, Parts 40, 380, 382, 385, 387, 390, 391, 392, 393, 395, 396 and 399, and Appendix G, CFR, as revised October 1, 2015.

IV. INSPECTIONS STANDARDS AND REPORTS

A. Through a Memorandum of Understanding (MOU) with the CVSA, the CSP adopts the standards and procedures established for the inspection of commercial vehicles, collectively known as the North American Uniform Driver/Vehicle Inspection.

B. Authorized enforcement officials performing safety inspections on commercial vehicles, drivers, and cargo shall use as general guidelines the levels, methods of inspections and Out-of-Service criteria, found in the CVSA bylaws, as revised April 1, 2016.

C. Authorized enforcement officials shall, on completion of each inspection, prepare a report which at minimum fully identifies the inspector, the inspector's agency, the carrier's name and address, the date and time of the inspection, the location of the inspection, the vehicle, the driver, the defects found, if any, and the disposition of the vehicle. A copy of the inspection report shall be given to the driver or motor carrier.

V. REGULATIONS

A. All intrastate and interstate motor carriers, commercial vehicles and drivers thereof operating within the state of Colorado shall operate in compliance with the safety regulations contained in:

49 CFR 40	Procedures for Transportation Workplace Drug and Alcohol Testing Programs
49 CFR 380	Special Training Requirements
49 CFR 382	Controlled Substances and Alcohol Use and Testing
49 CFR 385 Subparts C & D	Safety Fitness Procedures
49 CFR 387	Minimum Levels of Financial Responsibility for Motor Carriers
49 CFR 390	Federal Motor Carrier Safety Regulations: General
49 CFR 391	Qualifications of Drivers and Longer Combination Vehicle (LCV) Driver Instructors
49 CFR 392	Driving of Commercial Motor Vehicles
49 CFR 393	Parts & Accessories Necessary for Safe Operation
49 CFR 395	Hours of Service of Drivers
49 CFR 396	Inspection, Repair, and Maintenance
49 CFR 399	Employee Safety and Health Standards
49 CFR Appendix G:	Minimum Periodic Inspection Standards

of the United States Department of Transportation's Motor Carrier Safety Regulations as the same were in effect on October 1, 2015 and published in Title 49 of the Code of Federal Regulations (CFR), subtitle B chapter III, Parts 200 through 399, with references therein, with the following modifications:

1. Unless otherwise specified, all references to interstate commerce shall include intrastate commerce.

2. 49 CFR 380.509 (a) shall be amended to read: "Each employer must ensure each entry level driver, who first begins operating a commercial motor vehicle requiring a commercial driver's license under §42-2-404, CRS, receives the training required by 49 CFR 380.503."

3. 49 CFR 385.301 through 385.308 and 385.319 (b) through 385.337 shall not apply. 49 CFR 385.309 through 385.319 (a), hereafter referred to as the Intrastate New Entrant Safety Assurance Program, shall apply to intrastate motor carriers who are beginning in intrastate operations and are required to obtain an intrastate USDOT identification number. A prior interstate safety audit or compliance review shall meet the requirement for an intrastate safety audit.
   a. All interstate motor carriers beginning operations in Colorado must submit to a Safety Audit as defined in 49 CFR 385.3.
      i. Safety audits on interstate carriers beginning operations in the State of Colorado will be conducted by the CSP MCSS.
   b. All intrastate motor carriers beginning operations in Colorado are eligible for the Colorado Intrastate New Entrant Safety Assurance Program. New intrastate carriers may schedule training by contacting the CSP MCSS.

4. Pursuant to §42-4-235(4) (A), CRS, the financial responsibility and insurance provisions of these rules do not apply to commercial vehicles regulated by the Colorado Public Utilities Commission (PUC). 49 CFR 387.1 through 387.17, 387.303, 387.305 and 387.309 shall apply with the following exceptions:
   a. 49 CFR 387.7 (e) and (g) shall not apply.

   b. 49 CFR 387.9 (4) applies only to interstate and foreign commerce.

   c. Transportation carriers may obtain a certificate of self insurance issued pursuant to §42-7-501, CRS, or part 387 of 49 CFR.

   d. Motor carriers subject to these rules shall carry a minimum level of cargo liability coverage of $10,000 for loss or damage to property carried on any one motor vehicle or an amount adequate to cover the value of the property being transported, whichever is less, unless the shipper and the property carrier otherwise agree by written contract to a lesser amount.

5. 49 CFR 390.3 (f), (1-2) and (6) shall not apply.

6. 49 CFR 390.5 Definitions:

   a. The definition of "Commercial Motor Vehicle" and "Motor Carrier" shall not apply.
   b. The definition of an "Emergency" is amended by adding the following: "A governmental agency has determined that a local emergency requires relief from the maximum driving time in 49 CFR 395.3 or 395.5."

7. 49 CFR 390.19 (a) is amended to read: "Each motor carrier that conducts operations in intrastate commerce must apply for and receive an intrastate USDOT identification number prior to beginning operations within the state. The motor carrier is required to update this information every 24 months."

   a. Identification numbers for intrastate motor carriers are processed by the Colorado State Patrol, Motor Carrier Safety Section and issued through the Federal Motor Carrier Safety Administration (FMCSA).

   b. Only the legal name and/or a single trade name may be used on the application for the USDOT identification number.

8. 49 CFR 390.21 (b) is amended by adding the following: "Intrastate carriers must mark their vehicles with the assigned intrastate USDOT identification number, preceded by the letters "USDOT" and followed by the suffix "CO" (e.g.: USDOT 1234567 CO).

   a. Motor carriers operating in intrastate commerce, not transporting 16 or more passengers (including the driver) or transporting placarded hazardous materials and having a GVWR or GCWR equal to or in excess of 10,001 lbs., but not in excess of 26,000 lbs, may meet the marking requirements of 49 CFR 390.21 by marking the trailer or secondary unit, if the GVWR of the self-propelled unit is 10,000 lbs. or less.

   b. In the interests of public safety, repossessors as defined within §42-6-146 (4), CRS, operating intrastate are not subject to the marking requirements of 49 CFR 390.21.

9. 49 CFR 391.11(b)(1) shall be amended to read: "Is at least 21 years old if engaged in interstate commerce or transporting hazardous materials of a type or quantity that would require the vehicle to be marked or placarded under 49 CFR 177.823. All other drivers must be at least 18 years of age."

10. Public transit agency carriers and their drivers operating in intrastate commerce may meet the requirement in 49 CFR 395.1 (e) (1) (ii) by either meeting the existing regulation or by replacing 49 CFR 395.1 (e) (1) (ii) with "the driver is released from work within 12 consecutive hours."

11. 49 CFR 395.3 or 395.5 shall not apply to drivers of either Colorado governmental or tow trucks working an emergency, as defined in 49 CFR 390.

12. 49 CFR 395.3 shall not apply to tow drivers who are towing a vehicle from public roadway at the request of a police officer or other law enforcement purpose.

13. Drivers transporting livestock, poultry, slaughtered animals or the grain, corn, feed, hay etc. used to feed animals are eligible to use the agricultural operations exception in 49 CFR 395.1 (k).

14. 49 CFR 395.1 (k) is amended to read: "Is conducted during the planting and harvesting seasons within Colorado as determined by the Department of Agriculture to be from January 1 to December 31."

15. All references to federal agencies and authorized personnel shall be construed to include the CSP, PUC, and law enforcement agencies with a signed MOU with the CSP and their authorized personnel.

16. All reporting requirements referred to in 49 CFR 40, 368, 380, 382, 385, 387, 390, 391, 392, 393, 395, 396 and 399, upon request shall be filed with or provided to the CSP MCSS, 15075 S. Golden Rd., Golden, CO 80401, or by mutually agreed upon methods of electronic document delivery.

B. These Rules and Regulations apply to all vehicles which meet the definition of a commercial vehicle set forth in §42-4-235 (1) (a), CRS, and drivers which meet the definition of "Driver" as described in 49 CFR 390.5, with the following exceptions:

1. Drivers of intrastate vehicles and combination of vehicles with a gross vehicle weight rating (GVWR) or gross combined weight rating (GCWR) of not more than 26,000 pounds, and which do not require a commercial driver's license to operate, are not subject to 49 CFR 391, Subpart E, Physical Qualifications and Examinations;

2. Vehicles owned and operated by the Federal Government or state government or political subdivision thereof not domiciled in Colorado, which are not transporting hazardous materials of a type and quantity that requires the vehicle to be marked or placarded under 49 CFR 172.504;

3. The operation of authorized emergency vehicles, as defined in §42-1-102 (6), CRS, while in emergency and related operations;

4. The operations of snowplows when removing snow/ice from the roadway or related snow/ice removal operations;

C. **Traction Devices Required**

Drivers operating a commercial vehicle as defined in Colorado Department of Transportation (CDOT) rule 2 CCR 601-14, with the exception of mobile cranes, that are operated on Interstate 70 between milepost 133 and milepost 259 from September 1st to May 31st inclusive, must carry tire chains as defined in §42-4-106 (5) (A) (I),

CRS. Alternative traction devices or tire cables may be used in lieu of tire chains as identified in 2 CCR 601-14.

VI. SAFETY FITNESS RATINGS AND INTRASTATE CIVIL PENALTIES

A. The Colorado Department of Public Safety (CDPS) is authorized by the provisions of §42-4-235(2) (a), CRS, to collect civil penalties levied against intrastate carriers found in violation of the rules pursuant to §42-4-235(4) (a), CRS, as adopted by the CDPS. The following procedure shall apply to the determination and issuance of those penalties.

B. The CSP must establish a Safety Fitness Rating for each motor carrier upon which it conducts a compliance review. The CSP shall use as general guidelines the procedures and definitions contained in 49 CFR 385.

1. Scope, Authority and Application

a. §42-4-235(2) (a), CRS, Minimum Standards for Commercial Vehicles. No person shall operate a commercial vehicle on a public highway of this state unless such vehicle is in compliance with the rules adopted by CSP. Any person who violates such rules shall be subject to the civil penalties authorized pursuant to 49 CFR 386, Subpart G.

i. Intrastate motor carriers shall not be subject to any provisions in 49 CFR 386, Subpart G that relate the amount of a penalty to a violator's ability to pay. Such penalties shall be based upon the nature and gravity of the violation, the degree of culpability and such other matters as justice and public safety may require.

b. The CSP shall have exclusive enforcement authority to conduct safety compliance reviews, as defined in 49 CFR 385.3 and to impose civil penalties pursuant to such rules.

c. The Civil Penalty will be applied at the completion of a compliance review by a Motor Carrier Safety Investigator certified by the FMCSA as a compliance review investigator.

2. Definitions

a. **Civil Penalty Process**: The process and proceedings to collect civil penalties by the CSP for violations of §42-4-235, CRS.

b. **Notice of Claim Letter**: The written order informing the motor carrier of their penalty, the rights associated with the penalty and the process for responding to the penalty. Also known as a "NOC" letter.

c. **Commercial Vehicle**: Shall have the same meaning as described in §42-4-235 (1) (a), CRS.

d. **Compliance Review**: An examination of motor carrier operations, such as driver's hours of service, maintenance and inspection, driver qualification, commercial driver's license requirements, financial responsibility, accidents, hazardous materials, and other safety and transportation records to determine whether a motor carrier meets the safety fitness standard.

e. **Conditional Safety Rating**: A rating indicating that a motor carrier does not have adequate safety management controls in place to ensure compliance with the safety fitness standard that could result in occurrences listed in 49 CFR 385.5.

f. **Motor Carrier**: Shall have the same meaning as described in §42-4-235(1)(c), CRS.

g. **Served/Service**: Shall indicate that the Notice of Claim or service document was sent by first class mail to the last address furnished to the CSP MCSS by the motor carrier or was personally served by a uniformed member of the CSP.

    i. Service of a notice or document by first class mail is considered complete when it is mailed, not when it is received.

h. **Satisfactory Safety Rating**: A rating indicating that a motor carrier has in place and functioning adequate safety management controls to meet the safety fitness standard prescribed in 49 CFR 385.5. Safety management controls are adequate if they are appropriate for the size and type of operation of the particular motor carrier.

i. **Unsatisfactory Safety Rating**: A rating indicating a motor carrier does not have adequate safety management controls in place to ensure compliance with the safety fitness standard which has resulted in occurrences listed in 49 CFR 385.5.

3. Safety Fitness Rating

a. Upon completion of a compliance review the CSP shall assign a proposed safety fitness rating that shall be based on the degree of compliance with the federal motor carrier safety fitness standard for motor carriers found in 49 CFR 385.5. The safety rating will be determined using the factors prescribed in 49 CFR 385.7. A motor carrier may determine their degree of compliance with the safety fitness standard by reviewing 49 CFR 385.5 or by contacting the CSP MCSS for an Electronic Training Packet.

b. On the 61st day after the assignment of a proposed safety fitness rating the motor carrier's safety fitness rating will become a final safety fitness rating.

c. The final safety fitness rating of an intrastate motor carrier will be available to the public upon request by contacting the CSP Central Records Unit (CRU) office at:

Colorado State Patrol
Central Records Unit
700 Kipling St.
Lakewood, CO 80215
303-239-4500

d. If a motor carrier believes the CSP committed an error in assigning its safety rating they may request an administrative review. The request must conform to the following provisions.

   i. The request must be in writing addressed to the Chief of the CSP or his or her designee within 30 days of the assignment of the proposed safety fitness rating.

   ii. The request must explain the error the motor carrier believes the CSP committed in issuing the safety rating. The motor carrier must include a list of all factual and procedural issues in dispute, and any information or documentation that supports its argument.

   iii. The Chief of the CSP or his or her designee may request more information and/or require the motor carrier to attend a conference to discuss the rating. If the motor carrier does not provide the information requested or attend the conference then the chief/designee may dismiss the request.

   iv. The Chief of the CSP or his or her designee will serve the decision within 30 days of receiving the request.

   v. The proposed safety fitness rating will remain as a proposed safety fitness rating until the decision of the Chief of the CSP or his or her designee.

   vi. The decision will include the assignment of a final safety fitness rating. The decision constitutes final action by the CSP.

e. In the event a safety fitness rating is assigned to an intrastate motor carrier, the motor carrier may request a change to their safety fitness rating based on

corrective actions taken by the motor carrier. This request cannot be made, and will not be acted upon, sooner than 90 days after the assignment of a proposed safety fitness rating. The request must be in writing and addressed to the Chief of the CSP or his or her designee. The request must conform to the following provisions:

i. The motor carrier must submit a description of corrective action taken, hereinafter referred to as the Safety Management Plan (SMP).

ii. The SMP shall address each violation on the most recent compliance review that was an acute and/or critical violation. It shall also address factor six (crashes) of the compliance review when the rating for factor six is "unsatisfactory."

iii. The SMP must identify why the violation(s) cited as acute and critical were permitted to occur.

iv. The SMP must discuss the actions to be taken to correct the deficiency or deficiencies that allowed the acute and or critical violations to occur.

v. Actions taken to insure these critical and/or acute violations do not reoccur in the future.

vi. If factor six (crashes) is rated as unsatisfactory an accident countermeasure program must be included as part of the SMP. The program must include, but not limited to, defensive driving training.

vii. If the SMP includes actions taken in the near future, such as training, reorganization of departments, purchasing of computer programs etc., a schedule of when that activity is to occur must be included.

viii. Any additional documentation or information that relates to motor carrier safety and the prevention of crashes and hazardous materials incidents must be included.

ix. The SMP must include a written statement certifying that the motor carrier will operate in compliance with the motor carrier safety and hazardous materials regulations adopted by the CSP pursuant to §§42-4-235 and 42-20-108, CRS, and all applicable state and local laws.

x. The SMP must be signed by a corporate officer in the case of a corporation, a member or manager in the case of a limited liability company, by the general partner of a limited partnership or by all partners or proprietors in the case of a general partnership or proprietorship.

f. The motor carrier may request a change in their safety fitness rating by requesting a follow up compliance review, as follows:

   i. The request must be made to the Chief of the CSP or his or her designee. The request cannot be made and will not be acted upon, sooner than three months after the assignment of a proposed safety fitness rating.

   ii. The compliance review investigator will review the corrective actions taken by the motor carrier since the last compliance review.

4. Civil Penalty

a. The compliance review may result in the assessment of a civil penalty as prescribed by §42-4-235(2) (a) and (b), CRS, for violations discovered during the compliance review.

b. The amount of the civil penalty will be determined by taking into account the following factors:

   i. Nature and gravity of the violation;

   ii. Degree of culpability;

   iii. History of offenses within three years preceding the date of the compliance review;

   iv. Such other matters as justice and public safety may require, not to include any consideration of a violator's ability to pay the civil penalty.

c. The intrastate operation of implements of husbandry shall not be subject to the civil penalties provided in 49 CFR 386, Subpart G.

d. The compliance review investigator will use the Uniform Fine Assessment (UFA), as incorporated by the CSP, to determine the civil penalty levied upon the motor carrier.

5. Civil Penalty Process

a. **Notification.** Upon determination of the civil penalty, the compliance review investigator will serve notification in the form of a claim letter.

b. **Payment or Administrative Review.** The motor carrier shall serve the CSP MCSS with their response to the claim letter within 30 days of service of the claim letter in one of the following ways:

i. Pay the full amount of the civil penalty as instructed in the claim letter; or

ii. Submit a written request for a payment plan to the Commander of the CSP MCSS; or

iii. If a motor carrier believes the CSP committed an error in determining its civil penalty, they may request an administrative review of that penalty. The following provisions will govern the administrative review:

A. The request must be in writing addressed to the Chief of the CSP or his or her designee within 30 days of the service of the Notice of Claim (NOC) letter.

B. The request must explain the error the motor carrier believes the CSP committed in issuing the civil penalty. The motor carrier must include a list of issues in dispute, and any supporting information or documentation.

C. The Chief of the CSP or his or her designee may request additional information and/or require the motor carrier to attend a conference to discuss the penalty. If the motor carrier does not provide the information requested or attend the conference then the Chief of the CSP or his or her designee may dismiss the request.

D. The Chief of the CSP or his or her designee shall serve the motor carrier with a written decision within 30 days after the Chief of the CSP or his or her designee has determined that the administrative record is complete. This decision shall constitute final agency action.

E. The motor carrier has 30 days from the date of the service of the decision to pay the penalty, to arrange for a payment plan as described in 5 (b) (ii) or 35 days from the date of final agency action to file an action in the appropriate district court as provided by §24-4-106 (4), CRS.

iv. If, after the 30 days, the carrier does not pay the penalty, request a payment plan or file an action in the appropriate district court the carrier will be deemed to have failed to pay.

v. If a carrier has failed to pay the assessed or adjudicated penalty, the registrations of the carrier's vehicles shall be cancelled pursuant to §42-3-120, CRS.

VI. MISCELLANEOUS

A. All contact with the CSP regarding these rules or their applicability should be addressed to:

Colorado State Patrol
Motor Carrier Safety Section
15075 South Golden Road
Golden, CO 80401
303-273-1875
303-273-1939 Fax
MCSAP@STATE.CO.US

B. The safety regulations hereby adopted are contained in the publication entitled Code of Federal Regulations 49 CFR 200 to 399 revised as of October 1, 2015. All publications and rules adopted and incorporated by reference in these regulations are on file and available for public inspection by contacting the officer in charge of the CSP MCSS at 15075 S. Golden Rd., Golden, CO, 80401. Materials incorporated by reference may be examined by any state publication depository library. This rule does not include later amendments to or additions of any materials incorporated by reference.