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MEMORANDUM

September 20, 2007

TO: Members of the Transportation Legislation Review Committee

FROM: Geoffrey Johnson, Research Associate, 303-866-4788

SUBJECT: Colorado Port of Entry Section Overview

This memorandum provides an overview of state law pertaining to port of entry weigh stations, as well as the functions and administration of the Port of Entry (POE) Section in the Colorado Department of Revenue. The memorandum addresses POE facilities, functions, personnel, joint ports of entry, and automated clearance of commercial vehicles.

Colorado Port of Entry Section overview. The State of Colorado created its first port of entry in 1927, primarily for tax collection purposes. Since that time, the role of the ports of entry has expanded to include enforcement of truck size and weight restrictions, safety inspections, collection of fees and fines, and checks of required permits, vehicle registrations, and operator licenses.

Colorado law creates the POE Section within the Motor Carrier Services Division of the Colorado Department of Revenue (DOR).¹ The executive director of the DOR is assigned responsibility for operating port of entry weigh stations, determining their locations on the state's highways, and promulgating regulations relating to port operations.² In FY 2006-07, 127 full-time employees (FTE) were assigned to positions at the state's ports of entry. This number increased to 131 full-time employees for FY 2007-08. These figures do not include six employees of the Motor Carrier Services Division who perform administrative functions for the ports at the headquarters of the POE Section in Lakewood. Approximately one-quarter of POE Section employees have been assigned to mobile port operations in recent years. However, port officers are occasionally shifted between mobile ports and fixed ports as the need arises.

The POE Section operates ten fixed ports in the state and ten mobile ports. The fixed ports are located in the following Colorado towns: Cortez, Dumont, Fort Collins, Fort Morgan, Lamar, Limon, Loma, Monument, Platteville, and Trinidad. The fixed ports are strategically located in positions throughout the state that receive high volumes of truck traffic. Colorado law requires that the fixed ports be operated on a 24-hour basis. However, the executive director of DOR may choose to close the ports for specific holidays, or for other reasons, such as traffic patterns and highway safety. For example, high truck traffic volume will occasionally cause a line of trucks to

¹ Section 42-8-103, C.R.S.

² Section 42-8-104, C.R.S.

begin to back up out of a port entrance and onto a highway. In these instances, the ports are closed to avoid the creation of a traffic hazard.

Colorado statutes also authorize DOR to use mobile port of entry weigh stations.³ The mobile ports increase the enforcement capability of the POE Section by permitting truck weight and safety inspections in remote areas of the state. A 2006 audit of the POE Section by the Colorado State Auditor found that since the locations of mobile ports of entry are not predictable, they are much more effective than fixed ports at detecting operator and vehicle violations. The POE Section operates ten mobile ports, using portable scales, to ensure vehicle compliance with weight limits. The mobile ports also check vehicles for compliance with size restrictions, safety requirements, and credentialing requirements. The ten mobile ports operate throughout the state. POE Section procedures require that the mobile ports operate in at least 30 distinct sites in Colorado over the course of each month.

Table 1 provides expenditures by the Motor Carrier Services Division in recent fiscal years. For FY 2006-07, expenditures within the POE Section represent 80.8 percent of total operational expenditures by the Motor Carrier Services Division, and 78.6 percent of total division expenditures.

Table 1 - Motor Carrier Services (MCS) Division Expenditures - FY 2005-06 and FY 2006-07

MCS Program	Program Cost FY 2005-06	Program Cost FY 2006-07	Percentage Change FY 2005-06 to FY 2006-07	Primary Funding Source	Description
POE Operations	\$7,471,081	\$7,345,616	-1.7%	Highway User's Tax Fund	POE size/weight/safety checks
International Registration Plan	\$546,718	\$554,211	1.4%	General Fund	Ensures payment of license fees under the International Registration Plan
Commercial Driver License Compliance Program	\$0	\$222,096	NA	General Fund	Trains and licenses commercial driver license testers
Nuclear Materials Inspection Program	\$56,919	\$63,857	12.2%	Nuclear Materials Transportation Cash Fund	Document review and safety inspection for nuclear shipments
Hazardous Materials Permitting Program	\$214,189	\$214,522	0.2%	Hazardous Materials Safety Cash Fund	Document review and safety inspection for hazardous material shipments
Motor Carrier Safety Assistance Program	\$733,946	\$693,877	-5.5%	Federal Motor Carrier Safety Administration (FMCSA) Grant	Commercial vehicle and driver safety inspections
Total Program Expenditures	\$9,022,854	\$9,094,179	0.8%		
Small Federal Grants	\$153,709	\$56,558	-63.2%	Various small federal grants	Commercial Driver's License Anti-Fraud Grant, Commercial Vehicle Information Systems and Network Grant, and Transuranic Waste Grant
Capital Construction	\$942,112	\$196,472	-79.1%	Highway User's Tax Fund	Construction at ports, replacement of mobile ports equipment
Total MCS Expenditures	\$10,118,676	\$9,347,209	-7.6%		

Source: Motor Carrier Services Division, Colorado Department of Revenue

³ Section 42-8-103 (2), C.R.S.

Functions of the POE Section

Colorado's POE Section personnel ensure that commercial vehicle operators and their trucks are in compliance with all relevant state and federal laws and regulations including: compliance with weight and size limits, safety and insurance requirements, and possession of required licenses, registrations, and permits. "Clearing" a port means that port officers have processed the truck which may involve weighing, conducting a safety inspection, and/or ensuring that the driver has all required credentials. When a truck has met all of these requirements, it is said to have "cleared" a port of entry.

Enforcement. Colorado statutes designate POE personnel as peace officers of the state.⁴ As peace officers, these employees have the authority to restrain and detain persons, and may also impound trucks until all outstanding taxes or fees are paid, and until an operator is in compliance with statutes or regulations. Truck drivers who operate their vehicles without valid registrations, permits, and licenses, or without having paid all taxes and fees due on the vehicle commit a Class 2 misdemeanor traffic offense.⁵ The minimum sentence for a Class 2 misdemeanor traffic offense is ten days imprisonment, or a \$10 fine, or both. The maximum sentence for a Class 2 misdemeanor traffic offense is 90 days imprisonment, or a \$300 fine, or both. Upon conviction of a driver for a third offense within a calendar year, the driver's operator license may be suspended for up to a six-month period.

POE personnel are charged to ensure that trucks are in compliance with state and federal safety requirements. Port officers target those trucks that pose the greatest risk of safety violations for inspection, however, available resources permit the physical safety inspection of only a fraction (less than 1 percent) of the trucks that clear the ports. In FY 2006-07, 24,579 safety inspections were conducted while 6,348,808 trucks cleared the state's ports that year (0.39 percent).

POE officers are authorized to inspect truck fuel tanks to ensure that the vehicles are not operating on Colorado highways with tax-exempt diesel fuel.⁶ POE officers also check for impaired drivers and contraband. Table 2 provides recent statistics regarding POE Section enforcement activities.

⁴ Section 42-8-104 (2), C.R.S.

⁵ Section 42-8-109, C.R.S.

⁶ Section 42-8-105 (3.5), C.R.S.

Table 2
POE Section Enforcement Statistics

	FY 2004-05	FY 2005-06	Percentage Change FY 2004-05 to FY 2005-06	FY 2006-07	Percentage Change FY 2005-06 to FY 2006-07
Total Trucks Cleared through the Ports	5,777,134 (100%)	5,969,603 (100%)	3.3%	6,348,808 (100%)	6.35%
Trucks Weighed	4,930,889 (85.4%)	5,016,784 (84.0%)	1.7%	5,423,400 (85.4%)	8.1%
Safety Inspections Conducted	32,442 (0.56%)	30,228 (0.51%)	- 6.8%	24,579 (0.39%)	- 18.7%
Safety Citations Issued	11,925 (0.21%)	13,779 (0.23%)	15.5%	12,810 (0.20%)	-7.0%
Trucks/Drivers Placed Out of Service for Violations	14,503 (0.25%)	12,938 (0.22%)	- 10.8%	10,719 (0.17%)	- 17.2%

Source: Motor Carrier Services Division and Department of Revenue 2006 Annual Report

Weight limitations. Colorado law requires trucks and truck/trailer combinations with an empty weight exceeding 16,000 pounds to clear the state's ports.⁷ In addition, any vehicle with a gross combined vehicle weight rating (GCWR) exceeding 26,000 pounds must clear the ports. The GCWR (which is specified by a vehicle's manufacturer) is the maximum permissible loaded weight of a towing vehicle and its trailer. The GCWR is the sum of the weight of the truck and its passengers, the weight of the trailer and the truck's payload. Vehicles exceeding these weight thresholds are required to clear all ports that are within five miles of the route on which they are traveling, unless the operator has previously secured a clearance or obtained a special permit. Permits that allow for exceptions to size and weight limitations, "extra-legal" permits, are issued by the Colorado Department of Transportation. The accuracy of scales used at the ports is monitored by the Division of Inspection and Consumer Services in the Colorado Department of Agriculture.

⁷ Section 42-8-105 (1), C.R.S.

Table 3 provides maximum permissible loads on interstate highways within Colorado, as well as other Colorado highways. State governments typically receive substantial federal funding for the maintenance and construction of highways within the federal interstate system.

Table 3
Limits on Gross Weight of Vehicles and Loads on Colorado Highways

Gross Weight Limitation	Colorado Highways (pounds)	Interstate Highways in Colorado (pounds)
Two-axle Vehicle ⁸	36,000	36,000
Three or More Axle Vehicle ⁹	54,000	54,000
Truck/Trailer or Combination of Vehicles ¹⁰	85,000	80,000

Source: Sections 42-4-507, and 42-4-508, C.R.S.

Persons found in violation of weight limitations on Colorado highways are subject to fines and surcharges that vary with the amount of excess weight. Fines and surcharges for excess weight range from a \$15 fine and \$6.50 surcharge for trucks that are one to 3,000 pounds overweight, to a \$665 fine and \$319.80 surcharge for trucks that are 10,001 to 10,250 pounds overweight. Trucks that are more than 10,250 pounds overweight must pay an additional \$30 fine and \$14.30 surcharge for each 250 pounds of excess weight.

Permits/insurance. POE Section personnel are required to confirm that truck drivers possess all required permits and meet all insurance requirements. The POE Section issues permits relating to the safe operation of trucks on the state's highways, including permits:

- for trucks that are not registered in Colorado to travel on the roads of the state for up to 72 hours. These permits are called "laden weight registration trip permits." The amount of the permit fee varies with the weight of the vehicle;
- for special trips by vehicles that exceed the state's size and weight requirements. Permit fees vary by vehicle size/weight and number of trips;

⁸ This weight must be distributed in order that no axle exceeds the maximum gross weight for a single axle. When the wheels on the axle are equipped with solid rubber or cushion tires the axle weight limit is 16,000 pounds. When the wheels on the axle are equipped with pneumatic tires the axle weight limit is 20,000 pounds. When the wheels on the axle are equipped with pneumatic tires, and the vehicle is a digger derrick or a bucket boom truck operated by an electric utility off of the interstate system, the axle weight limit is 21,000 pounds.

⁹ This weight must be distributed in order that no axle exceeds the maximum gross weight for a single axle, or tandem axle. When the wheels on the tandem axle are equipped with pneumatic tires the axle weight limit is 36,000 pounds on the interstate system, and 40,000 pounds on the non-interstate system. Both the single and tandem axle weight limitations are increased by 1,000 pounds for vehicles that contain alternative fuel systems operating on non-interstate roads.

¹⁰ For vehicles on Colorado highways, the vehicle must comply with the "Colorado Bridge Formula." The Colorado Bridge Formula is: Maximum Axle Weight = 1,000 x (Length + 40), where "Length" is the number of feet between the centers of the first and last axles of the vehicle. For vehicles on interstate highways, the vehicle must comply with the "Federal Bridge Formula." The Federal Bridge Formula is: Gross Vehicle Weight = 500 x (LN/N-1 + 12N +36), where L = the distance in feet between the extremes of any group of two or more consecutive axles, and N = the total number of axles.

- valid for a 60-day period for farm-plated vehicles during annual harvests. Permit fees vary by vehicle type; and
- regulating the payment of fuel taxes for diesel vehicles that have not registered for an International Fuel Tax Agreement (IFTA) license. Called "special fuel permits," the cost of the permit is one dollar. IFTA is an agreement among 48 U.S. states and 10 Canadian provinces to simplify the payment of fuel taxes by international motor carriers.

All moneys collected for the issuance of these permits are deposited in the state's Highway User's Tax Fund for maintenance and construction of the state's transportation infrastructure.

The POE Section also collects permit application fees that are transferred to the Transportation Section of the Colorado Public Utilities Commission (PUC) within the Department of Regulatory Agencies. The fees are deposited in the PUC Motor Carrier Fund. These fees, along with other fees collected on behalf of the PUC, are summarized in Table 4.

**Table 4
POE Section Collection of PUC Fees**

PUC Permit/Fee	Amount	Description
Hazardous Materials Permit	Varies with vehicle number and cargo	Allows hazardous material transportation
PUC Stamp	\$5 annual fee	Required for the identification of for-hire motor carriers
PUC Filing Fee	Varies with type of carrier	Authorizes for-hire commercial motor vehicle travel
PUC Emergency Permit	\$20 emergency registration	Allows emergency seasonal movement of crops

POE section revenue collection. Table 5 provides POE Section revenues collected for permit issuance, penalty assessment, and tax assessments in FY 2004-05, FY 2005-06, and FY 2006-07.

Table 5
Port of Entry Section Collection of Fees, Fines, and Taxes FY 2004-05, FY 2005-06, FY 2006-07

Fee/Fine/Tax Collected	FY 2004-05	FY 2005-06	FY 2006-07	Description
PUC Filing Fee	\$36,103	\$36,680	\$29,063	Authorizing for-hire motor carrier travel
PUC Emergency Permit	\$5,800	\$7,500	\$4,420	Emergency seasonal movement of crops
PUC Stamps	\$7,220	\$6,555	\$4,360	Vehicle identification of for-hire motor carriers
Hazardous Materials Permit	\$30,850	\$32,475	\$35,650	Transportation of hazardous materials
Nuclear Materials Transportation Permit	\$0	\$0	\$0	Transportation of nuclear materials
Special Fuel Permit	\$6,197	\$5,986	\$6,806	Fuel tax trip permit
72-Hour Laden Weight Permit	\$889,595	\$907,052	\$923,310	Short-term permit for commercial vehicles not registered in Colorado
60-day Temporary Permit	\$53,920	\$60,340	\$34,980	Short-term permit for farm-plated vehicles during annual harvests
Extra-legal Permit	\$20,207	\$21,839	\$26,394	Movement of over-size and over-weight vehicles
Fee sub-total	\$1,049,892	\$1,078,427	\$1,064,983	
PUC Penalties	\$220,850	\$215,325	\$87,600	Penalties assessed for lack of proper credentials
POE Penalty Assessments	\$4,380,244	\$4,348,588	\$4,013,759	Oversize/overweight, safety violations, etc.
Fine sub-total	\$4,601,094	\$4,563,913	\$4,101,359	
Distrain Warrant to Collect Taxes ¹¹	\$168,126	\$428,038	\$64,172	Collection of delinquent taxes
Passenger Mile Tax ¹²	\$30,029	\$26,997	\$28,746	Tax assessed on passenger carriers
Special Fuel Tax ¹³	\$87,384	\$85,094	\$96,925	Tax assessed on "special fuels" including diesel and natural gas.
Specific Ownership Tax ¹⁴	\$1,340,054	\$1,693,792	\$2,015,054	Specific ownership tax collected on out-of-state mobile machinery, and including tax debts for in-state machinery which are collected at the county level
Tax sub-total	\$1,625,593	\$2,233,921	\$2,204,897	
Grand Total	\$7,276,579	\$7,876,261	\$7,371,239	

Source: Colorado Department of Revenue

¹¹ A "Warrant for Distrain" is a legal document authorizing the department to collect delinquent taxes, or seize and sell sufficient property to satisfy delinquent taxes.

¹² Colorado law (Section 42-3-304, C.R.S.) requires operators of vehicles designed to carry 14 or more passengers for compensation to pay the passenger mile tax. The amount of tax due is calculated with the formula: \$0.001 x the number of passengers x the number of Colorado miles driven.

¹³ Colorado law (Section 39-27-102 (1)(a)(II)(B), C.R.S.) imposes special fuel taxes at the rate of 20.5 cents per gallon on vehicles using special fuel in Colorado. "Special fuel" is diesel, kerosene, liquified petroleum gas, and natural gas used to propel a motor vehicle.

¹⁴ Colorado law (Section 42-3-106 (2)(e), C.R.S.) imposes specific ownership taxes on special mobile machinery that is operated on the public highways of the state. Special mobile machinery is equipment commonly used in the construction industry. The annual specific ownership tax due on each piece of special mobile machinery ranges from 2.1 percent of taxable value in the first year of ownership to 0.50 percent of taxable value in the sixth and later years of ownership.

Joint ports of entry. Colorado law authorizes DOR to enter into cooperative agreements with representatives of neighboring states for the operation of joint ports of entry.¹⁵ Under the agreements, the jointly operated ports may collect fees and taxes imposed by each state, enforce the motor vehicle laws of the each state, and have access to each state's relevant motor vehicle databases. The joint ports eliminate the need for each state to build and operate a separate port facility. Colorado has entered into agreements to operate joint ports with the states of Utah and New Mexico. The Colorado/New Mexico joint port has two facilities located on either side of Interstate Highway 25 at the Colorado/New Mexico border. The facility in Colorado is within the municipal limits of the City of Trinidad. The Colorado/Utah joint port has two facilities located on either side of Interstate Highway 70 at the Colorado/Utah border. Both of the facilities are located within Colorado.

Automated clearance of commercial vehicles. PrePass is a private, nationwide company that offers its customers automated clearance at ports of entry in participating states. At present, 28 states have entered into agreements with PrePass to facilitate clearance of their ports of entry by commercial vehicles. PrePass became available in Colorado in 2000, under a contract with DOR.

PrePass customers pay a monthly fee for automated port clearance services and must equip their trucks with transponders issued by the company. The transponders allows the trucks to be checked for compliance with weight restrictions while the vehicle is at highway speed by means of weigh-in-motion scales imbedded in the highway. In Colorado, this technology is termed "automated vehicle identification/weigh-in-motion." PrePass also allows operators of commercial vehicles to be checked for compliance with credentialing requirements without stopping at a port. As a truck approaches a port of entry, the PrePass transponder in the vehicle signals the driver to bypass the port, or to pull into a port of entry for further inspection. According to the Motor Carrier Services Division, approximately 51 percent of all truck traffic currently cleared through Colorado ports of entry are PrePass clearances.

¹⁵ Section 42-8-111, C.R.S.