



COLORADO

**Department of
Regulatory Agencies**

Colorado Office of Policy, Research &
Regulatory Reform

**2016 Sunset Review:
Motorcycle Operator Safety Training**

October 14, 2016





COLORADO

**Department of
Regulatory Agencies**

Executive Director's Office

October 14, 2016

Members of the Colorado General Assembly
c/o the Office of Legislative Legal Services
State Capitol Building
Denver, Colorado 80203

Dear Members of the General Assembly:

This year, Colorado's sunset review process celebrates its 40th anniversary with the publication of the 2016 sunset reports. The Colorado General Assembly established the sunset review process in 1976 as a way to analyze and evaluate regulatory programs and determine the least restrictive regulation consistent with the public interest. Since that time, Colorado's sunset process has gained national recognition and is routinely highlighted as a best practice as governments seek to streamline regulation and increase efficiencies.

The Colorado Office of Policy, Research and Regulatory Reform (COPRRR), located within my office, is responsible for fulfilling these statutory mandates. To emphasize the statewide nature and impact of this endeavor, COPRRR recently launched a series of initiatives aimed at encouraging greater public participation in the regulatory reform process, including publication of a new "Citizen's Guide to Rulemaking" (available online at www.dora.colorado.gov/opr).

Section 24-34-104(5)(a), Colorado Revised Statutes (C.R.S.), directs the Department of Regulatory Agencies to:

- Conduct an analysis of the performance of each division, board or agency or each function scheduled for termination; and
- Submit a report and supporting materials to the office of legislative legal services no later than October 15 of the year preceding the date established for termination.

Accordingly, COPRRR has completed the evaluation of the Motorcycle Operator Safety Training Program, located within the Department of Transportation's Office of Transportation Safety (Office). I am pleased to submit this written report, which will be the basis for COPRRR's oral testimony before the 2017 legislative committee of reference.

The report discusses the question of whether there is a need for the regulation provided under Part 5 of Article 5 of Title 43, C.R.S. The report also discusses the effectiveness of the Director of the Office and the Motorcycle Operator Safety Advisory Board, in carrying out the intent of the statutes and makes recommendations for statutory and administrative changes in the event this regulatory program is continued by the General Assembly.

Sincerely,

Joe Neguse
Executive Director





COLORADO

Department of Regulatory Agencies

Colorado Office of Policy, Research &
Regulatory Reform

2016 Sunset Review Motorcycle Operator Safety Training

SUMMARY

What Is The Motorcycle Operator Safety Training (MOST) Program?

The MOST Program, administered by the Colorado Department of Transportation's Office of Transportation Safety (CDOT and Office, respectively), approves motorcycle (both two- and three-wheel) basic rider course curricula that is taught at MOST Program-approved schools (also referred to as vendors) and taught by MOST Program-approved instructors. Completion of a MOST Program-approved course not only helps to prepare riders to ride safely, but also provides them with a waiver from the motorcycle skills test ordinarily required by the Division of Motor Vehicles to obtain a motorcycle or three-wheel endorsement on their driver's license.

What Is The Motorcycle Operator Safety Advisory Board (Advisory Board)?

The 12-member Advisory Board comprises representatives from various areas of the motorcycle-riding community as well as representatives of CDOT, the Colorado Department of Revenue and the Colorado State Patrol.

Why Does The MOST Program Exist?

The MOST Program was created to promote motorcycle operator safety training, and to increase its accessibility and affordability. Motorcycle rider fatalities continue to plague the state, and motorcycle operator safety training is seen as a component in reducing crashes and fatalities.

How Is The MOST Program Administered?

Effective summer 2016, many of the day-to-day functions of operating the MOST Program have been outsourced to the Motorcycle Safety Foundation (MSF). MSF is required to, among other things, conduct quality assurance inspections of vendors and instructors and maintain data. The MOST Program Coordinator, an Office employee, will continue to certify MOST Program vendors, support the Advisory Board, manage the MOST Program rules and budget and interact with the Department of Revenue.

Who Participates?

As of the end of fiscal year 15-16, there were 12 MOST Program vendors and 127 MOST Program instructors. That same year, 7,462 students completed a MOST Program basic rider course.

What Does It Cost?

The MOST Program is funded through two separate assessments. There is a \$4 assessment on each motorcycle registration and a \$2 assessment on each motorcycle endorsement to a driver's license. In fiscal year 15-16, MOST Program expenditures totaled \$337,571 and CDOT allocated 1.0 full-time equivalent employees to the program.

KEY RECOMMENDATIONS

Continue the MOST Program for five years, until 2022.

To promote training and motorcycle safety, the General Assembly created the MOST Program in 1990 as a means to increase accessibility and affordability. Whereas there were five motorcycle safety schools in 1990, there were 12 in 2016. Recognizing this change in conditions, the MOST Program has adapted to renew its focus on the quality of the safety training offered. Towards this end, the Office has outsourced several aspects of the MOST Program. Due to these recent changes, a five year continuation is justified.

METHODOLOGY

As part of this review, staff of the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) attended meetings of the Advisory Board; interviewed Office staff, Advisory Board members, individual motorcycle safety instructors and representatives of motorcycle safety schools, industry associations, and other state agencies; and reviewed Advisory Board minutes, Colorado statutes and rules. In order to better understand how motorcycle operator safety courses are operated, COPRRR staff also observed one such course.

MAJOR CONTACTS MADE DURING THIS REVIEW

American Insurance Association
Colorado Department of Higher Education
Colorado Department of Law
Colorado Department of Revenue
Colorado Department of Transportation
Colorado Division of Insurance
Colorado State Patrol
Evergreen Safety Council
MOST Program vendors
Motorcycle Operator Safety Advisory Board Members
Motorcycle Safety Foundation
Powersports Dealers Association of Colorado
Rocky Mountain Insurance Information Association
Total Control Training Incorporated

What is a Sunset Review?

A sunset review is a periodic assessment of state boards, programs, and functions to determine whether they should be continued by the legislature. Sunset reviews focus on creating the least restrictive form of regulation consistent with protecting the public. In formulating recommendations, sunset reviews consider the public's right to consistent, high quality professional or occupational services and the ability of businesses to exist and thrive in a competitive market, free from unnecessary regulation.

Sunset Reviews are prepared by:
Colorado Department of Regulatory Agencies
Colorado Office of Policy, Research and Regulatory Reform
1560 Broadway, Suite 1550, Denver, CO 80202
www.dora.state.co.us/opr



Table of Contents

Background	1
Introduction.....	1
Types of Regulation.....	2
Licensure	2
Certification.....	3
Registration	3
Title Protection.....	3
Regulation of Businesses	4
Sunset Process	4
Methodology	4
Profile of Motorcycle Safety in Colorado	5
Legal Framework.....	8
History of Regulation	8
Legal Summary	9
Program Description and Administration	12
Motorcycle Operator Safety Advisory Board.....	16
Certifications	16
Quality Assurance	20
Incident Reports.....	21
Collateral Consequences - Criminal Convictions.....	21
Analysis and Recommendations.....	22
Recommendation 1 - Continue the Motorcycle Operator Safety Training Program for five years, until 2022.	22
Recommendation 2 - Repeal an obsolete statutory reference.	27
Administrative Recommendation 1 - The Office should reform the curriculum approval process to be more transparent and timely.	27
Administrative Recommendation 2 - The Executive Director of CDOT should redouble efforts to recruit a member to the Advisory Board to represent retail motorcycle dealers.	28
Administrative Recommendation 3 - The Executive Director should redouble efforts to recruit a representative of an insurance industry association, rather than an individual insurance carrier, to represent motorcycle insurance providers on the Advisory Board.	29
Administrative Recommendation 4 - The Office should improve its recordkeeping. ...	29

Background

Introduction

Enacted in 1976, Colorado's sunset law was the first of its kind in the United States. A sunset provision repeals all or part of a law after a specific date, unless the legislature affirmatively acts to extend it. During the sunset review process, the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) within the Department of Regulatory Agencies (DORA) conducts a thorough evaluation of such programs based upon specific statutory criteria¹ and solicits diverse input from a broad spectrum of stakeholders including consumers, government agencies, public advocacy groups, and professional associations.

Sunset reviews are based on the following statutory criteria:

- Whether regulation by the agency is necessary to protect the public health, safety and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less or the same degree of regulation;
- If regulation is necessary, whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms and whether agency rules enhance the public interest and are within the scope of legislative intent;
- Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures and practices and any other circumstances, including budgetary, resource and personnel matters;
- Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;
- Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates;
- The economic impact of regulation and, if national economic information is not available, whether the agency stimulates or restricts competition;
- Whether complaint, investigation and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession;
- Whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action;

¹ Criteria may be found at § 24-34-104, C.R.S.

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- Whether the agency through its licensing or certification process imposes any disqualifications on applicants based on past criminal history and, if so, whether the disqualifications serve public safety or commercial or consumer protection interests. To assist in considering this factor, the analysis prepared pursuant to subparagraph (i) of paragraph (a) of subsection (8) of this section shall include data on the number of licenses or certifications that were denied, revoked, or suspended based on a disqualification and the basis for the disqualification; and
 - Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.

Types of Regulation

Consistent, flexible, and fair regulatory oversight assures consumers, professionals and businesses an equitable playing field. All Coloradans share a long-term, common interest in a fair marketplace where consumers are protected. Regulation, if done appropriately, should protect consumers. If consumers are not better protected and competition is hindered, then regulation may not be the answer.

As regulatory programs relate to individual professionals, such programs typically entail the establishment of minimum standards for initial entry and continued participation in a given profession or occupation. This serves to protect the public from incompetent practitioners. Similarly, such programs provide a vehicle for limiting or removing from practice those practitioners deemed to have harmed the public.

From a practitioner perspective, regulation can lead to increased prestige and higher income. Accordingly, regulatory programs are often championed by those who will be the subject of regulation.

On the other hand, by erecting barriers to entry into a given profession or occupation, even when justified, regulation can serve to restrict the supply of practitioners. This not only limits consumer choice, but can also lead to an increase in the cost of services.

There are also several levels of regulation.

Licensure

Licensure is the most restrictive form of regulation, yet it provides the greatest level of public protection. Licensing programs typically involve the completion of a prescribed educational program (usually college level or higher) and the passage of an examination that is designed to measure a minimal level of competency. These types of programs usually entail title protection - only those individuals who are properly licensed may use a particular title(s) - and practice exclusivity - only those individuals who are properly licensed may engage in the particular practice. While these requirements can be viewed as barriers to entry, they also afford the highest level of consumer protection in that they ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.

Certification

Certification programs offer a level of consumer protection similar to licensing programs, but the barriers to entry are generally lower. The required educational program may be more vocational in nature, but the required examination should still measure a minimal level of competency. Additionally, certification programs typically involve a non-governmental entity that establishes the training requirements and owns and administers the examination. State certification is made conditional upon the individual practitioner obtaining and maintaining the relevant private credential. These types of programs also usually entail title protection and practice exclusivity.

While the aforementioned requirements can still be viewed as barriers to entry, they afford a level of consumer protection that is lower than a licensing program. They ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.

Registration

Registration programs can serve to protect the public with minimal barriers to entry. A typical registration program involves an individual satisfying certain prescribed requirements - typically non-practice related items, such as insurance or the use of a disclosure form - and the state, in turn, placing that individual on the pertinent registry. These types of programs can entail title protection and practice exclusivity. Since the barriers to entry in registration programs are relatively low, registration programs are generally best suited to those professions and occupations where the risk of public harm is relatively low, but nevertheless present. In short, registration programs serve to notify the state of which individuals are engaging in the relevant practice and to notify the public of those who may practice by the title(s) used.

Title Protection

Finally, title protection programs represent one of the lowest levels of regulation. Only those who satisfy certain prescribed requirements may use the relevant prescribed title(s). Practitioners need not register or otherwise notify the state that they are engaging in the relevant practice, and practice exclusivity does not attach. In other words, anyone may engage in the particular practice, but only those who satisfy the prescribed requirements may use the enumerated title(s). This serves to indirectly ensure a minimal level of competency - depending upon the prescribed preconditions for use of the protected title(s) - and the public is alerted to the qualifications of those who may use the particular title(s).

Licensing, certification and registration programs also typically involve some kind of mechanism for removing individuals from practice when such individuals engage in enumerated proscribed activities. This is generally not the case with title protection programs.

Regulation of Businesses

Regulatory programs involving businesses are typically in place to enhance public safety, as with a salon or pharmacy. These programs also help to ensure financial solvency and reliability of continued service for consumers, such as with a public utility, a bank or an insurance company.

Activities can involve auditing of certain capital, bookkeeping and other recordkeeping requirements, such as filing quarterly financial statements with the regulator. Other programs may require onsite examinations of financial records, safety features or service records.

Although these programs are intended to enhance public protection and reliability of service for consumers, costs of compliance are a factor. These administrative costs, if too burdensome, may be passed on to consumers.

Sunset Process

Regulatory programs scheduled for sunset review receive a comprehensive analysis. The review includes a thorough dialogue with agency officials, representatives of the regulated profession and other stakeholders. Anyone can submit input on any upcoming sunrise or sunset review on COPRRR's website at: www.dora.colorado.gov/opr.

The functions of the Director of the Department of Transportation's Office of Transportation Safety (Director and Office, respectively) as enumerated in Part 5 of Article 5 of Title 43, Colorado Revised Statutes (C.R.S.), shall terminate on September 1, 2017, unless continued by the General Assembly. During the year prior to this date, it is the duty of COPRRR to conduct an analysis and evaluation of the administration of the Director pursuant to section 24-34-104, C.R.S.

The purpose of this review is to determine whether the currently prescribed program to approve motorcycle operator safety schools and instructors should be continued and to evaluate the performance of the Director. During this review, the Director must demonstrate that the program serves the public interest. COPRRR's findings and recommendations are submitted via this report to the Office of Legislative Legal Services.

Methodology

As part of this review, COPRRR staff attended meetings of the Motorcycle Operator Safety Advisory Board (Advisory Board); interviewed Office staff, Advisory Board members, individual motorcycle safety instructors and representatives of motorcycle safety schools, industry associations, and other state agencies; and reviewed Advisory Board minutes, Colorado statutes and rules. In order to better understand how motorcycle operator safety courses are operated, COPRRR staff also observed one such course.

Profile of Motorcycle Safety in Colorado

Colorado has seven of the “Top 100 Motorcycle Roads” in the country, placing the state second in the nation behind California, which has eight such roads.²

In 2014, the last full year for which figures are available, 195,603 motorcycles were registered in Colorado, accounting for 3.5 percent of all registered vehicles in the state.³ According to various estimates, Colorado ranks somewhere between 14th and 18th among the states, in terms of motorcycle registration.⁴

To ride a motorcycle (either a two- or three-wheel vehicle with an engine size that is 50 cubic centimeters or larger) on Colorado’s public streets or highways, a driver must possess a motorcycle or three-wheel endorsement on his or her driver’s license.⁵ While this sunset report typically refers only to motorcycle endorsements, both types of endorsement are implied where appropriate. There are several pathways to acquiring an endorsement,⁶ but two are relevant to this report: 1) pass the tests administered by Colorado Department of Revenue, Division of Motor Vehicles (DMV); or 2) complete a course offered through the Colorado Department of Transportation’s (CDOT’s) Motorcycle Operator Safety Training (MOST) Program.

DMV

To obtain a motorcycle endorsement by way of this path, a rider must first take and pass the DMV’s written motorcycle test, which can be done at any DMV office that has automated testing computers. The test consists of 25 items covering a wide variety of subjects that are addressed in the DMV’s *Colorado Motorcycle Operator’s Handbook*, and include:

- Preparing to ride;
- Control for safety;
- See and be seen;
- Lane position;
- Keeping a safe distance;
- Scan, Identify, Predict, Decide and Execute;
- Dangerous surfaces;
- Collision avoidance;

² MotorcycleRoads.com. *How Popular is Motorcycling in Your State?* Retrieved on July 22, 2016, from www.motorcycleroads.com/augments/infographics/2013-infographics/motorcycling-popularity-us-states.htm#sthash.puTl4IZB.dpbs

³ Colorado Department of Revenue. *Annual Report 2015*, pp. 56 and 57.

⁴ See The Motley Fool. *50 States Ranked for Highest Motorcycle Ownership: You Won’t Guess Who’s No. 2*. Retrieved July 22, 2016 from www.fool.com/investing/general/2014/02/16/50-states-ranked-for-highest-motorcycle-ownership.aspx; Statista. *U.S. Motorcycle Registration Estimates in 2014, by state (in units)*. Retrieved July 22, 2016, from www.statista.com/statistics/191002/number-of-registered-motorcycles-in-the-us-by-state/. WorldAtlas.com. *The Number of Motorcycles by State*. Retrieved July 22, 2016, from www.worldatlas.com/articles/who-rides-the-most-motorcycles-in-the-us.html

⁵ Colorado Department of Revenue, *Colorado Motorcycle Operator’s Handbook* (2012), p. 3.

⁶ Additional pathways include transferring a driver’s license from another state that already has a motorcycle endorsement or successfully completing a program offered by Harley-Davidson.

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- Mechanical problems;
 - Special situations;
 - Carrying passengers and cargo; and
 - Group riding.

There is no charge to take the written test the first time, though there is an \$11.15-fee to retake the test.⁷

Once the rider passes the written test, he or she must purchase a motorcycle instruction permit, which is valid for two years. The fee for this permit is \$16.80.⁸

To obtain an endorsement, the rider must also pass a skills test, which covers cone weave, normal stop, turn from a stop, left U-turn, quick stop and an obstacle swerve.

Five DMV offices (Boulder, Central Denver, Durango, Glenwood Springs and Grand Junction) in the state are able to administer the motorcycle skills test. Tests are administered by appointment only, and appointments are typically scheduled several weeks in advance. However, the DMV has contracted with 32 vendors around the state to offer third-party testing. The test is the same, regardless of whether it is administered by the DMV or a third-party. A skills test is free if taken at the DMV (\$15 for any retests),⁹ but third-party testers establish their own fees. In fiscal year 15-16, third-party testers administered 1,900 skills tests and DMV offices administered 557.

Once the rider passes the skills test, he or she must purchase a new driver's license to add the motorcycle endorsement. The rider must pay the \$26.80-fee for the new driver's license plus a \$2 motorcycle endorsement fee.¹⁰

MOST Program

Alternatively, a rider may complete a motorcycle safety course approved by the MOST Program. This path obviates the need take the DMV's written test and the need to obtain an instruction permit.

CDOT's Office of Transportation Safety (Office) has contracted with 12 vendors across the state, which in turn contract with or employ 127 MOST-certified instructors, to provide courses as part of the MOST Program. These basic rider programs utilize curricula approved by the Office and developed by the Motorcycle Safety Foundation (MSF), Evergreen Safety Council (sidecar/trike only), and as of Summer 2016, Total Control Training Incorporated (Total Control). These two-day courses cover similar topics, including:

⁷ Colorado Department of Revenue. *DMV Fees*. Retrieved on July 25, 2016, from www.colorado.gov/dmv/dmv-fees

⁸ Colorado Department of Revenue. *DMV Fees*. Retrieved on July 25, 2016, from www.colorado.gov/dmv/dmv-fees

⁹ Colorado Department of Revenue. *DMV Fees*. Retrieved on July 25, 2016, from www.colorado.gov/dmv/dmv-fees

¹⁰ Colorado Department of Revenue. *DMV Fees*. Retrieved on July 25, 2016, from www.colorado.gov/dmv/dmv-fees

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- Protective gear;
 - Motorcycle controls and instruments;
 - Motorcycle riding, including braking, changing gears and cornering;
 - Road conditions;
 - Rider awareness; and
 - Effects of impairment due to things such as alcohol, drugs and fatigue.

Upon completion of a MOST Program course, the rider receives proof of completion. This essentially constitutes a waiver from the DMV's motorcycle skills test and can be presented at any DMV office. The rider must still obtain a new driver's license with the motorcycle endorsement and pay the applicable fees.

The reasons why a rider may choose one path over another vary, but in fiscal year 14-15, approximately 9,600 riders participated in MOST Program courses. Anecdotally, many do not want to wait the weeks it may take to secure an appointment to take the skills test at the DMV. Some prefer the camaraderie of taking a course with their friends, while others cite safety considerations.

In 2015, two percent of all crashes in Colorado involved a motorcycle, and 63 percent of the time, the motorcyclist was at fault.¹¹ Worse, there were 106 motorcycle fatalities, including passengers, in 2015, representing 19 percent of all fatalities related to a crash.¹² Thus, safety is a legitimate concern for motorcycle riders.

Finally, some riders may take a MOST Program course for financial reasons. Many insurance carriers offer a discount to motorcyclists who complete a safety course, though the size of the discount varies considerably among carriers.

In fiscal year 2015, MOST Program courses were offered in 16 counties; courses were offered in the home county of 71 percent of Colorado-registered motorcycles.

¹¹ Colorado Department of Transportation, Office of Transportation Safety. *MOST Annual Report: State Fiscal Year 2016*, p. 8.

¹² Colorado Department of Transportation, Office of Transportation Safety. *MOST Annual Report: State Fiscal Year 2016*, p. 4.

Legal Framework

History of Regulation

The General Assembly created the Motorcycle Operator Safety Training (MOST) Program in 1990, with the passage of House Bill 90-1155, to increase accessibility, affordability and consistency of motorcycle safety training. Major features of this bill include:

- Placed the MOST Program within the Department of Highways' (now the Department of Transportation or CDOT) Division of Highway Safety (now the Office of Transportation Safety or Office);
- Limited participation in MOST Program courses to those who held Colorado driver's licenses;
- Directed the Office to establish standards for the certification of motorcycle safety courses and the instructors who teach them;
- Established the qualifications for MOST Program course instructors;
- Created the MOST Fund;
- Created a five-member advisory committee with a scheduled sunset date of 1996;
- Imposed a \$1 surcharge on each motorcycle endorsement on a driver's license issued by the Department of Revenue, Division of Motor Vehicles (DMV), to be credited to the MOST Fund;
- Imposed a \$2 surcharge on each motorcycle registration, to be credited to the MOST Fund; and
- Capped program administrative costs at 15 percent of the total cost of the program.

In 1996, the advisory committee repealed by operation of law.¹³

Senate Bill 00-11 increased the surcharge imposed on motorcycle endorsements to \$2, effective July 1, 2006; House Bill 05-1107 increased the surcharge imposed on motorcycle registrations to \$4.

In 2007, the General Assembly passed Senate Bill 42, which expanded who could participate in a MOST Program course to include those in Colorado on active military service.

Finally, House Bill 13-1083 enacted several changes:

- Required the Office to ensure that MOST Program courses follow the standards established by the Office;
- Expanded the population of who can participate in MOST Program courses to anyone with a valid driver's license;
- Required the Office to establish a system to record program performance data, including fatalities among those who have completed a MOST Program course;

¹³ § 2-3-1203(3)(i)(I), C.R.S.

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- Prohibited the expenditure of MOST funds on items such as motorcycles, helmets and textbooks;
 - Created the 12-member Motorcycle Operator Safety Advisory Board (Advisory Board); and
 - Scheduled the MOST Program to sunset on September 1, 2017.

Legal Summary

The MOST Program is created in Part 5 of Article 5 of Title 43, Colorado Revised Statutes (C.R.S.). Accordingly, the Office is required to (and has done so):¹⁴

- Establish a motorcycle operator safety training program that promotes motorcycle safety awareness and supports courses to teach students to safely operate a motorcycle;¹⁵
- Train instructors;¹⁶
- Set standards for certification of courses in the MOST Program;¹⁷
- Ensure that program training follows the Office's standards;¹⁸
- Ensure that courses are offered safely, consistent with best practices;¹⁹ and
- Contract with MOST Program vendors²⁰ for the purpose of providing the MOST Program.²¹

The Office is further directed to promulgate rules, and has done so, establishing:²²

- The standards for MOST Program vendors to provide training services;²³ and
- A system to record program performance data, including information on motorcycle accidents, injuries, and fatalities among those who have completed a MOST Program course.²⁴

¹⁴ § 43-5-502(1)(a)(I), C.R.S.

¹⁵ See 2 CCR § 601-23-7.00, MOST Program Rules.

¹⁶ See 2 CCR §§ 601-23-5.00 and 601-23-6.00, MOST Program Rules.

¹⁷ See 2 CCR § 601-23-4.00, MOST Program Rules.

¹⁸ See 2 CCR § 601-23-10.00, MOST Program Rules.

¹⁹ See 2 CCR §§ 601-23-7.00 and 601-23-9.00, MOST Program Rules.

²⁰ A MOST Program vendor is a person that offers a course that complies with the MOST Program standards. § 43-5-501(3.6), C.R.S.

²¹ See 2 CCR §§ 601-23-2.01.1, 601-23-11.00 and 601-23-12.00, MOST Program Rules.

²² § 43-5-502(1)(b), C.R.S.

²³ See, generally 2 CCR § 601-23, MOST Program Rules.

²⁴ See 2 CCR § 601-23-2.01.9, MOST Program Rules.

Administrative costs are prohibited from exceeding 15 percent of the total cost of the MOST Program.²⁵ Administrative expenses are defined as,

salary and related benefit costs and operating costs. Operating costs shall include: costs related to the daily administration of the MOST Program; staff in-state travel to conduct MOST related business; capital equipment ordered by CDOT staff (not included under a MOST Program vendor purchase order or contract); office supplies used for administration of the [MOST] Program; copying, printing and form reproduction, and tuition/registration costs for the MOST Program staff as it relates to the MOST Program.²⁶

MOST Program instructors must complete an Office-approved training course, within which a student must demonstrate knowledge of course material, knowledge of safe motorcycle operating practices, and the necessary aptitude for instructing students.²⁷ Instructors must be at least 21 years old and hold a valid Colorado driver's license with a motorcycle endorsement that has not been revoked within the previous three years.²⁸ Additionally, no instructor certificate can be issued to a person who has, within the previous three years:²⁹

- Been convicted for an offense that is assigned eight or more points, or
- Had a driver's license from any state revoked or suspended.

Instructor certifications are valid for one year, expiring on February 28.³⁰

To further the goals of the MOST Program, the General Assembly created the 12-member Advisory Board. Nine members are appointed by the Executive Director of CDOT:³¹

- Two members who represent MOST Program vendors,
- One member who represents retail motorcycle dealers,
- One member who represents third-party testers,
- One member who represents instructor training specialists,
- One member who represents the motorcycle riding community,
- One member who represents motorcycle training providers not affiliated with the MOST Program,
- One member who represents law enforcement agencies, and
- One member who represents motorcycle insurance providers.

Each of these members serve two-year terms.³²

²⁵ § 43-5-502(1)(e), C.R.S.

²⁶ 2 CCR § 601-23-1.01, MOST Program Rules.

²⁷ § 43-5-503(1), C.R.S., and 2 CCR § 601-23-5.03, MOST Program Rules.

²⁸ § 43-5-503(2), C.R.S., and 2 CCR § 601-23-5.02, MOST Program Rules.

²⁹ § 43-4-503(3), C.R.S., and 2 CCR § 601-23-5.02.5, MOST Program Rules.

³⁰ 2 CCR § 601-23-5.05, MOST Program Rules.

³¹ § 43-5-505(1)(d), C.R.S.

³² § 43-5-505(3), C.R.S.

Additional members of the Advisory Board are:³³

- The Director of the Office, or the Director’s designee;
- The Executive Director of the Department of Revenue, or the Executive Director’s designee; and
- The Chief of the Colorado State Patrol, or the Chief’s designee.

The Advisory Board elects one of these three to serve as chair and one as vice-chair, each serving two-year terms as such.³⁴

The Advisory Board must meet at least quarterly to make recommendations regarding:³⁵

- Training methods to increase safety and reduce motorcycle crashes and injuries,
- Training methods to increase program effectiveness,
- Improvements to the MOST Program and training, and
- Expenditures of MOST Fund dollars.

On or before September 1 each year, CDOT must report to the Legislative Audit Committee and the House and Senate Transportation Committees. The report must comment on:³⁶

- The effectiveness of the MOST Program,
- Annual motorcycle accidents or fatalities,
- Availability of training throughout the state,
- Historic and current training costs, and
- Other performance measures.

The MOST Program is funded by motorcycle riders. A \$2 surcharge is imposed on all new and renewal motorcycle endorsements,³⁷ a \$1 surcharge is imposed on all motorcycle endorsement extensions,³⁸ and a \$4 surcharge is imposed on all new and renewal motorcycle registrations.³⁹ The funds are deposited in the MOST Fund.⁴⁰ MOST Fund dollars cannot be used to compensate MOST Program vendor operating expenses or to reimburse MOST Program vendors for motorcycles, helmets, textbooks or other capital expenses.⁴¹

³³ §§ 43-5-505(1)(a through c), C.R.S.

³⁴ § 43-5-505(3), C.R.S.

³⁵ §§ 43-5-505(2 and 6), C.R.S., 2 CCR §§ 601-23-16.02 and 601-23-16.04, MOST Program Rules.

³⁶ § 34-5-506, C.R.S.

³⁷ § 42-2-114(2)(d), C.R.S.

³⁸ § 42-2-118(1)(b)(II), C.R.S.

³⁹ § 42-3-304(4), C.R.S.

⁴⁰ § 43-5-504(1), C.R.S.

⁴¹ § 43-5-504(2), C.R.S.

Program Description and Administration

The Motorcycle Operator Safety Training (MOST) Program is housed in the Colorado Department of Transportation’s Office of Transportation Safety (CDOT and Office, respectively). Day-to-day operations are overseen by the MOST Program Coordinator, which comprises the sole full-time equivalent employee (FTE) dedicated to the MOST Program.

The MOST Program is funded through two primary sources: a \$2-surcharge on all new and renewal motorcycle endorsements on driver’s licenses and a \$4-surcharge on all new and renewal motorcycle registrations. These funds are collected by the Colorado Department of Revenue.

Table 1 illustrates, for the fiscal years indicated, the revenue generated by each source.

**Table 1
MOST Fees Collected⁴²**

	FY 10-11	FY 11-12	FY 12-13	FY 13-14	FY 14-15
Motorcycle Endorsement Surcharge	\$167,836	\$204,231	\$210,310	\$169,709	\$197,435
Motorcycle Registration Surcharge	\$627,136	\$642,640	\$635,115	\$659,284	\$652,779
Total State Funding	\$794,972	\$846,870	\$845,425	\$828,994	\$850,214

These two sources have provided a reliable funding stream for the MOST Program. Not all revenues were necessarily appropriated to the MOST Program in the year collected.

Additionally, by having a motorcycle safety program like the MOST Program, the state receives federal dollars under a grant made to states that use fees collected from motorcyclists for motorcycle programs. Table 2 illustrates, for the fiscal years indicated, the amount of federal money the state has received through this federal grant program.

**Table 2
Federal Grant Dollars**

State Fiscal Year	Amount of Grant
10-11	\$112,986
11-12	\$110,257
12-13	\$71,035
13-14	\$72,140
14-15	\$71,248

⁴² Figures may not add up to those reported as Total State Funding due to rounding.

These federal dollars are used for motorcycle safety countermeasures.

Table 3 illustrates, for the fiscal years indicated, expenditures related to the MOST Program.

**Table 3
Agency Fiscal Information⁴³**

Fiscal Year	FTE	Total Expenditures	Total Distributed to MOST Program Vendors/Tuition Subsidy	Total Spent on Administration	Percentage of Expenditure Spent on Administration	Total Amount to Promote Motorcycle Safety Awareness and Support Courses to Teach Students & Instructors
10-11	1.0	\$552,329	\$471,239	\$81,090	14.7	Not Applicable
11-12	1.0	\$809,425	\$730,275	\$79,150	9.8	Not Applicable
12-13	1.0	\$980,491	\$884,348	\$96,143	9.8	Not Applicable
13-14	1.0	\$948,346	\$846,660	\$101,685	10.7	Not Applicable
14-15	1.0	\$695,613	\$341,557	\$105,266	15.1	\$248,790

The revenue figures reported in Table 2 may not equate to the expenditure figures in Table 3 because the MOST Program can carry funds forward from one fiscal year to the next. Thus, not all revenues are expended in the same year in which they are realized.

Statute dictates that the MOST Program’s administrative costs not exceed 15 percent of total program expenditures. As Table 3 illustrates, the Office has largely complied with this requirement.

In 2013, the General Assembly passed House Bill 1083, which, among other things, directed the MOST Program to promote motorcycle safety awareness and support courses that teach students and train instructors. The first expenditures related to this task first occurred in fiscal year 14-15. Approximately \$100,000 was spent on:

- Creative development and strategy,
- Rack card development and printing,
- Developing and filming of video spots,

⁴³ Figures may not add up to those reported as Total Expenditures due to rounding.

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- Creating billboards and bar posters,
 - Social media development and execution,
 - New website, and
 - Media outreach.

Approximately \$150,000 was spent on media buys for billboards, bar posters and on-line advertising.

Overall expenditure fluctuations during the reporting period can, for the most part, be attributed to fluctuations in the tuition subsidies paid out. Not only did the number of students receiving a tuition subsidy fluctuate from year to year, but so too did the tuition subsidy amount.

Prior to fiscal year 15-16, one function of the MOST Program was to provide tuition subsidies, whereby MOST Program vendors⁴⁴ received a specified dollar amount per student from the MOST Program as a means of defraying the cost of the course. The subsidy was reduced from \$70 to \$35 in fiscal year 13-14. During this time, the MOST Program Coordinator was responsible for:

- Receiving and approving MOST Program vendor applications,
- Receiving and approving MOST Program instructor applications,
- Conducting quality assurance inspections of MOST Program vendor facilities,
- Processing tuition subsidy requests,
- Responding to inquiries on motorcycle safety,
- Fielding inquiries from the public, and
- Implementing MOST Program rules.

Over time, however, the MOST Program Coordinator spent more time processing tuition subsidies and less time visiting MOST Program vendors to conduct quality assurance inspections.

In 2014, the National Highway Traffic Safety Administration (NHTSA) conducted a technical assessment of the MOST Program. The NHTSA made a number of recommendations, including:⁴⁵

- Strengthen guidelines for conduct and quality control;
- Explore ways to outsource, streamline or eliminate the tasks of processing tuition benefit claims in order to enable the MOST Project Coordinator to perform duties more directly benefitting rider training and the comprehensive motorcycle safety program; and

⁴⁴ Those approved by the MOST Program to offer MOST Program motorcycle safety classes.

⁴⁵ National Highway Traffic Safety Administration, *Motorcycle Safety Program Technical Assessment for the State of Colorado*, March 2014, p. 10.

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- Pursue more efficient and effective methods of administering MOST Program funds and personnel, which could include redesigning or eliminating the tuition benefit/subsidy, outsourcing the oversight and management of the MOST Program or both.

The Office implemented several of these recommendations. Effective July 1, 2015, tuition subsidies ended. Effective summer 2016, the MOST Program contracted with the Motorcycle Safety Foundation (MSF) to implement the day-to-day functions of the program, under the direction of the MOST Program Coordinator. Under the terms of the contact, MSF will, among other things:

- Conduct an inventory of training ranges, including cataloguing the location of the ranges, which MOST Program vendors utilize those ranges,⁴⁶ ensuring their compliance with MOST Program-approved curricula and visiting them.
- Conduct multiple quality assurance inspections of all MOST Program vendors.
- Assume responsibility, under the direction of the MOST Program Coordinator, for certifying MOST Program instructors, including providing initial and ongoing training.⁴⁷
- Conduct quality assurance observations of all MOST Program instructors.
- Collect and maintain MOST Program data.

The contract is valid for an initial one-year term, but the Office may extend the contract for up to four additional, one-year terms. If this occurs, the contract will expire in May 2021.

Under the terms of the contract, MSF's remuneration is calculated on a per student basis, ranging between \$65 and \$70, for a maximum annual cost to the MOST Program of between \$650,000 and \$700,000 each year.⁴⁸

The MOST Program Coordinator will continue to:

- Certify MOST Program vendors;
- Support the Motorcycle Operator Safety Advisory Board (Advisory Board);
- Prepare the MOST Program annual report;
- Provide budgetary oversight;
- Manage the contract with MSF, providing oversight and reviewing MSF work product and reports;
- Implement recommendations from the NHTSA technical assessment;
- Serve as liaison between the MOST Program, CDOT and the Colorado Department of Revenue (DOR);
- Oversee the use of public relations funds;

⁴⁶ A single training range may be used by multiple MOST Program vendors.

⁴⁷ Ongoing training is to be driven by MSF's actual observations of MOST Program courses and instructors.

⁴⁸ The contract assumes that 10,000 students will be successfully trained each year. No payment is made for students who do not successfully complete the training.

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- Field public inquiries; and
 - Oversee the MOST Program rules.

As of this writing, the contract was in the process of being implemented. Additionally, it has been challenged in court.

Motorcycle Operator Safety Advisory Board

In 2013, the General Assembly created the Advisory Board, consisting of 12 members, nine of whom are appointed by the Executive Director of CDOT:

- Two members who represent MOST Program vendors,
- One member who represents retail motorcycle dealers,
- One member who represents third-party testers,
- One member who represents instructor training specialists,
- One member who represents the motorcycle riding community,
- One member who represents motorcycle training providers not affiliated with the MOST Program,
- One member who represents law enforcement agencies, and
- One member who represents motorcycle insurance providers.

Additional members of the Advisory Board are:

- The Director of the Office, or the Director's designee;
- The Executive Director of DOR, or the Executive Director's designee; and
- The Chief of the Colorado State Patrol, or the Chief's designee.

Although attendance at Advisory Board meetings by members and non-members is generally high, the retail motorcycle dealers' seat has been vacant since August 2015.

Meetings are frequently held at various CDOT facilities around the state.

Portions of each meeting are set aside for Advisory Board members to put forward recommendations and for public comment and discussion.

Certifications

The MOST Program certifies both MOST Program vendors and the instructors who teach for them.

MOST Program vendors must:

- Use MOST Program instructors;
- Provide and maintain an Office-approved training range;

- Comply with all quality assurance site inspections;
- Collect relevant student information, such as name, birthdate and driver’s license number;
- Ensure that each student signs a waiver; and
- Maintain all records for a period of three years.

To become a MOST Program vendor, the school must have access to a training range upon which on-motorcycle instruction will occur. The range must comply with the standards established by the curriculum being taught.

The MOST Program vendor application solicits information such as:

- Name and contact information of the vendor,
- The identities of MOST Program instructors to be utilized, and
- The locations and dimensions of any training ranges to be used.

The application also requires vendors to agree to MOST Program standards and rules.

The application must include a photograph and diagram of the training range to be used. The MOST Program Coordinator sends these documents to the relevant curriculum provider so that the range can be given an identification number. Once this number is issued, the vendor is approved and listed on the MOST Program’s website.

Table 4 illustrates, for the fiscal years indicated, the number of MOST Program vendors, the number of training locations and the total number of students taught.

Table 4
MOST Program Vendors and Students⁴⁹

Fiscal Year	Number of Vendors	Number of Locations	Number of Students
10-11	16	41	9,246
11-12	16	41	11,349
12-13	17	41	12,554
13-14	16	41	10,643
14-15	12	32	9,609

The number of MOST Program vendors remained fairly constant at 16 for three of the five years reported in Table 4.

The number of locations exceeds the number of vendors because a vendor may operate at several ranges or locations.

Although the number of students taught also fluctuates between approximately 9,200 and 12,500 per year, the five-year average is 10,680.

⁴⁹ Data obtained from MOST Program annual reports.

There is no fee to become a MOST Program vendor, and all certifications expire on February 28.

To teach a MOST Program vendor's basic motorcycle safety course, one must become a MOST Program certified instructor. Applicants must:

- Be at least 21 years old;
- Possess a valid Colorado driver's license with a motorcycle endorsement that has not been revoked or suspended within the previous three years;
- Within the previous three years, not have been convicted of an offense that is assigned eight or more points;
- Grant Office staff access to the applicant's driving record; and
- Complete a MOST Program instructor training course.

MOST Program instructor training courses are offered by the organizations that operate the MOST Program's approved curricula—Evergreen Safety Council (Evergreen), MSF or Total Control Training Incorporated (Total Control):

Evergreen

Evergreen's curriculum is approved to provide only a sidecar/trike basic rider course. Approximately 12 instructors were trained in Colorado approximately 10 years ago. Although no trainings have been held in the state since then, candidates can attend training sessions held in other states. The instructor course consists of seven to nine days of training and the passage of both knowledge tests and skills tests. The program culminates in the student teaching a sidecar/trike safety class.

MSF

MSF is approved to offer both motorcycle and three-wheel basic rider courses. Instructor training courses are offered on an ad hoc basis, and at various locations around the state. The instructor course consists of 60 hours of training and the passage of both knowledge tests and skills tests. The program culminates in the student teaching a motorcycle safety class. Approximately 88 percent of students who begin the class, successfully complete it. In 2015, there were three instructor training events in Colorado, producing 20 new MSF-certified instructors.

Total Control

Total Control is approved to offer a motorcycle basic rider course only. Total Control's curriculum was approved for use by MOST Program vendors in late summer 2016. As a result, no MOST Program-specific instructor training courses have been offered as of this writing. However, when they are offered, they will be offered on an ad hoc basis, and at various locations around the state. The instructor course consists of seven days of training and the passage of a skills test. Knowledge is assessed by way of observation of the student teaching two classes: one class of peers and one class of actual students.

Once certified by Evergreen, MSF or Total Control, the instructor submits an application to the Office. The application solicits information regarding:

- Name and contact information,
- Verification of the statutory requirements, and
- Names of the MOST Program vendors for which the instructor teaches or will teach.

While there is no fee to become a MOST Program certified instructor, the certification must be renewed annually. All certifications expire on February 28. To recertify, the instructor must demonstrate that he or she taught at least two MOST Program courses in the previous year.

Table 5 illustrates, for the fiscal years indicated, the number of MOST Program Instructors.

Table 5
MOST Program Instructors⁵⁰

Fiscal Year	Number of Instructors
10-11	150+
11-12	150+
12-13	250
13-14	250
14-15	160

The number of instructors peaked in fiscal years 12-13 and 13-14, and has declined since then. The decline, however, represents a return to pre-peak levels.

⁵⁰ Data obtained from MOST Program annual reports.

Quality Assurance

Historically, the MOST Program Coordinator has attempted to visit each MOST Program vendor on a regular basis to conduct a quality assurance inspection. However, due to recent staff changes, records of all such inspections are not available.

Table 6 illustrates, for the fiscal years indicated, the number of quality assurance inspections that Office staff could confirm, but it does not necessarily reflect all of the inspections that were actually conducted.

Table 6
Quality Assurance Inspections

Fiscal Year	Number of Inspections
10-11	32
11-12	43
12-13	0
13-14	9
14-15	12

Quality Assurance inspections can detect a number of issues. For example, in fiscal year 14-15, 12 such inspections were conducted, resulting in one written corrective action for multiple violations:

- Cracks and potholes in the training range,
- Failure to submit required incident reports,
- Conducting classes with an improper instructor-to-student ratio, and
- Instructors using their cell phones while conducting training range exercises.

This vendor ceased operations shortly after receiving the corrective action.

If during the quality assurance inspection, the inspector identifies minor violations, they are addressed on-site in an informal manner. In fiscal year 14-15, seven MOST Program vendors received these verbal recommendations for correction or improvement, covering issues such as:

- Utilizing a video monitor that was too small to present curriculum;
- Failure to coach individual students;
- Failure to ensure that all students were wearing proper attire;
- Reading only the instructions on the training range card, without embellishing or further explaining;
- Failure to speak in a voice loud enough to be heard by all students; and
- Failure to ensure a minimum 20-foot runoff on all sides of the training range.

Incident Reports

MOST Program instructors are required to report to the Office, within 72 hours, any incident during which property is damaged or a student is injured during a MOST Program course.⁵¹

Due to recent staffing changes, the MOST Program Coordinator was unable to locate information pertaining to any such incidents at the Office. However, after consulting with others, a sampling of such reports was identified and provided to the Colorado Office of Policy, Research and Regulatory Reform (COPRRR):

- In fiscal year 12-13, the reported incident involved a student who suffered a knee injury while engaged in on-range training exercises. There was no property damage. No ambulance was called and no hospitalization was reported.
- In fiscal year 14-15, the reported incident involved a student who sprained or broke a toe after “dropping” the motorcycle while engaged in on-range exercises. There was slight scuffing on the motorcycle, but no ambulance was called and no hospitalization was reported.
- Two reports were identified for fiscal year 15-16. In the first, the student side-swiped a car that was beyond the perimeter of the training range. The student suffered a bruised elbow and knee, and there was slight damage to the motorcycle and the car. However, no ambulance was called and no hospitalization was reported.
- In the final incident, the student locked the front brakes of a scooter while engaged in on-range exercises. While there was no reported property damage, the student was transported to the hospital by ambulance.

Collateral Consequences – Criminal Convictions

Section 24-34-104(6)(b)(IX), Colorado Revised Statutes, requires COPRRR to determine whether the agency under review, through its licensing processes, imposes any disqualifications on applicants or licensees based on past criminal history, and if so, whether the disqualifications serve public safety, commercial or consumer protection interests.

The MOST Program lacks the statutory authority to impose any such disqualifications on applicants or to revoke or suspend any vendor or instructor certifications.

⁵¹ 2 CCR § 601-23-5.03.4, Rules Governing the Motorcycle Safety Training (MOST) Program.

Analysis and Recommendations

Recommendation 1 – Continue the Motorcycle Operator Safety Training Program for five years, until 2022.

The first sunset criterion asks not only whether regulation is necessary to protect the public health, safety and welfare, but also whether the conditions that lead to the initial regulation have changed. Both of these questions are critical in determining whether to continue the Motorcycle Operator Safety Training (MOST) Program, which is administered by the Colorado Department of Transportation's (CDOT's) Office of Transportation Safety (Office).

According to testimony offered during the legislative hearings creating the MOST Program in 1990, there were five motorcycle safety schools in Colorado at the time. To promote training and motorcycle safety, the General Assembly created the MOST Program as a means to increase accessibility and affordability.

As initially implemented, the MOST Program accomplished these goals by:

- Certifying schools to participate in the MOST Program as vendors,
- Certifying instructors to teach at MOST Program vendors, and
- Providing a tuition subsidy to reduce the cost of MOST Program courses.

The MOST Program was, and still is, funded through surcharges imposed on motorcycle endorsements to driver's licenses and motorcycle vehicle registrations. Motorcycle riders fund the MOST Program for motorcycle riders.

Tuition subsidies were intended to motivate riders to take MOST Program courses by lowering the cost of such classes. If demand for the classes increased, the supply of schools would increase.

By fiscal year 14-15, the MOST Program certified 12 vendors (down from a program high of 17 in fiscal year 12-13) that graduated 9,609 students. The tuition subsidy stood at \$35 per student.

However, in 2011, the Office of the State Auditor found:

[N]o strong evidence exists to suggest that the MOST Program is still needed to fulfill its original purpose of making training more affordable and accessible. Our conclusion is based on five factors: 1) motorcycle safety training is widely accessible across the state; 2) it is not clear that the MOST Program subsidy is needed to ensure affordability of training; 3) it is not clear that the MOST Program subsidy provides an incentive to take a motorcycle safety training course; 4) the effectiveness of motorcycle safety training classes is undetermined, according to the National Highway Traffic Safety Administration; and 5) [CDOT] does not believe the MOST Program is the most effective way to promote motorcycle safety in the state.⁵²

In 2014, the MOST Program commissioned a survey of MOST Program graduates, which revealed that 44 percent (less than half) of survey respondents were aware that their training costs had been reduced by the tuition subsidy.⁵³

Finally, that same year, the National Highway Traffic Safety Administration (NHTSA) conducted a technical assessment of the MOST Program and found “the tuition benefit as it is currently being administered is not the most effective and efficient use of MOST Program financial and human resources.”⁵⁴

The first sunset criterion asks whether the conditions that led to the creation of the program have changed, and whether other conditions have arisen which would warrant more, less or the same degree of regulation.

Clearly, the conditions that led to the creation of the MOST Program have changed—the tuition subsidy is not a primary motivator for students to attend MOST Program-approved classes and the number of schools has increased. Affordability and accessibility no longer seem to be issues. Indeed, as early as 2011 the State Auditor found,

Overall, we found that while access to and affordability of motorcycle safety training were concerns when the General Assembly created the program in 1990, the conditions that led to the creation of the MOST program have improved significantly in the past 20 years, which may make the program obsolete given today’s market for motorcycle safety training.⁵⁵

Although some conditions have changed since 1990, some have not, at least not in the last five years.

⁵² State of Colorado, Office of the State Auditor, *Motorcycle Operator Safety Training (MOST) Program Performance Audit*, September 2011, p. 39.

⁵³ Corona Insights for the Colorado Department of Transportation, *2014 Participant Survey Report*, p. 13.

⁵⁴ National Highway Traffic Safety Administration, *Motorcycle Safety Program Technical Assessment for the State of Colorado*, March 2014, p. 29.

⁵⁵ State of Colorado, Office of the State Auditor, *Motorcycle Operator Safety Training (MOST) Program Performance Audit*, September 2011, p. 11.

Table 7 illustrates, for the fiscal years indicated, the number of motorcycle endorsements relative to the number of licensed drivers in Colorado.

Table 7
Regular Driver’s Licenses and Motorcycle Endorsements⁵⁶

Fiscal Year	Total Regular Licenses In Force	Total Motorcycle Endorsements In Force	Motorcycles as a Percentage of All Licenses
10-11	3,659,765	Not Available	Not Available
11-12	3,670,574	371,477	10.1
12-13	3,679,267	378,206	10.3
13-14	3,729,743	384,761	10.3
14-15	3,796,432	391,206	10.3

The percentage of licensed drivers possessing a motorcycle endorsement has remained remarkably constant.

Not surprisingly, the percentage of registered motorcycles relative to total vehicle registrations has also remained remarkably constant, as evidenced by the data in Table 8.

Table 8
Vehicle and Motorcycle Registrations⁵⁷

Calendar Year	Total Vehicle Registrations	Total Motorcycle Registrations	Motorcycles as a Percentage of All Registrations
2010	5,047,563	176,885	3.5
2011	5,230,213	184,174	3.5
2012	5,245,403	183,983	3.5
2013	5,383,489	190,529	3.5
2014	5,560,590	195,603	3.5

Although similar statistics are not available for 1990, Tables 7 and 8 provide a reasonable baseline for the last five years. It is reasonable to hypothesize that if the percentage of riders and the number of registrations remained constant, then the number of motorcyclists involved in crashes and the number of motorcycle fatalities should also be constant, all things being equal. However, as Table 9 illustrates, this is not the case.

⁵⁶ Data obtained from Colorado Department of Revenue annual reports.

⁵⁷ Data obtained from Colorado Department of Revenue annual reports.

Table 9
Crash and Fatality Statistics

Calendar Year	Total Number of Motorcycle Crashes	Total Number of Traffic Crashes	Percent of All Crashes Involving a Motorcycle	Total Number of Motorcycle Fatalities	Total Number of Traffic Fatalities	Motorcyclist Fatalities as a Percentage of All Traffic Fatalities
2009	Not Reported	Not Reported	Not Reported	82	448	18
2010	Not Reported	Not Reported	Not Reported	78	447	17
2011	2,539	101,388	Not Reported	79	468	17
2012	2,552	101,636	2.5	79	472	17
2013	2,219	107,544	2.1	87	481	18
2014	2,333	115,454	2.0	94	488	19

As Table 9 illustrates, the number of motorcycles involved in crashes, as a percentage of all crashes, declined slightly over three years from 2.5 percent to 2.0 percent. Sadly, the number of motorcyclist fatalities as a percentage of all crash fatalities rose from 17 percent to 19 percent over the same three-year period.

Arguably, three years' worth of data do not a trend make, but they are informative—motorcycle riders tend to die in crashes more frequently than do other drivers. This is not surprising, given the vulnerability of motorcyclists relative to other drivers.

Although motorcycle crashes and fatalities are affected by a number of factors, some argue that because fatalities continue to increase, the MOST Program has been ineffective at increasing rider safety.

Additional data must be considered. From 2012 to 2014, 64 percent of motorcyclists involved in crashes were deemed “at fault”.⁵⁸ This number dropped slightly to 63 percent in 2015.⁵⁹

More telling, however, is that when MOST Program graduates were involved in crashes, they were at fault only 47 percent of the time in 2012,⁶⁰ 68 percent of the time in 2013,⁶¹ 64 percent of the time in 2014⁶² and 61 percent of the time in 2015.⁶³

⁵⁸ Colorado Department of Transportation, Office of Transportation Safety, *MOST Annual Report: State Fiscal Year 2013*, p. 6; Colorado Department of Transportation, Office of Transportation Safety, *MOST Annual Report: State Fiscal Year 2014*, p. 8; and Colorado Department of Transportation, Office of Transportation Safety, *MOST Annual Report: State Fiscal Year 2015*, p. 8.

⁵⁹ Colorado Department of Transportation, Office of Transportation Safety, *MOST Annual Report: State Fiscal Year 2016*, p. 8.

⁶⁰ Colorado Department of Transportation, Office of Transportation Safety, *MOST Annual Report: State Fiscal Year 2013*, p. 6.

⁶¹ Colorado Department of Transportation, Office of Transportation Safety, *MOST Annual Report: State Fiscal Year 2014*, p. 8.

⁶² Colorado Department of Transportation, Office of Transportation Safety, *MOST Annual Report: State Fiscal Year 2015*, p. 8.

The increase in 2013 may be attributable to how the figures were calculated. For example, in 2015, when MOST Program graduates were involved in crashes involving two or more vehicles, they were at fault only 37 percent of the time.⁶⁴ This may be the statistic reported for 2012, as well, and they are available for these two years only, so no further comparison is possible.

Regardless, these data seem to indicate that, except for 2015, MOST Program graduates are at fault as often or more often than their riding counterparts who did not complete a MOST Program course. While this cannot lead to any definitive conclusions, it is interesting, particularly in light of the changes the Office recently made to the MOST Program.

Effective July 1, 2015, the Office ended the practice of tuition subsidies, and shifted its focus to quality assurance. That is, the focus of the program has shifted from increasing accessibility and affordability to improving public safety and the quality of course offerings.

To further this endeavor, the Office entered into a contract with the Motorcycle Safety Foundation (MSF) to conduct the quality assurance inspections. Under this arrangement, the MOST Program Coordinator will continue to, among other things:

- Certify MOST Program vendors;
- Support the Motorcycle Operator Safety Advisory Board (Advisory Board);
- Prepare the MOST Program annual report;
- Provide budgetary oversight;
- Interact with the Department of Revenue's Division of Motor Vehicles (DMV); and
- Manage the contract with MSF, providing oversight and reviewing MSF work product and reports.

MSF will now ensure compliance by MOST Program vendors with the MOST Program's standards and will provide initial and ongoing training to MOST Program instructors.

Thus, the conditions that led to the creation of the MOST Program have changed, yet new conditions—the renewed focus on safety training—recommend in favor of continuation. The Most Program has adapted to a new environment.

The first sunset criterion also asks whether the program under review is necessary to protect the health, safety and welfare of the public. The fact that motorcycle riders continue to die at a higher rate than other motorists suggests that the program is necessary. However, there is only minimal data to indicate that MOST Program graduates are at fault in fewer crashes than non-graduates. As such, continuation, for a short time, is justified so that more data can be accumulated.

⁶³ Colorado Department of Transportation, Office of Transportation Safety, *MOST Annual Report: State Fiscal Year 2016*, p. 8.

⁶⁴ Colorado Department of Transportation, Office of Transportation Safety, *MOST Annual Report: State Fiscal Year 2016*, p. 8.

Furthermore, the recent changes in the way in which the MOST Program operates, and the renewed focus on the quality of safety training, argue in favor of continuation, but for a short period.

For all these reasons, the General Assembly should continue the MOST Program for five years, until 2022.

Recommendation 2 – Repeal an obsolete statutory reference.

Section 43-5-504(1), Colorado Revised Statutes (C.R.S.), contains a cross reference to section 42-2-114(4)(b), C.R.S., which was repealed in 2014. Therefore, the General Assembly should repeal this cross reference.

Administrative Recommendation 1 – The Office should reform the curriculum approval process to be more transparent and timely.

Section 43-5-502(1)(a)(I), C.R.S., requires the MOST Program to, among other things, “set the standards for the certification of courses.” To implement this requirement, the Office has promulgated a rule:

To be eligible for certification, MOST Program Basic Rider Courses must be reviewed, evaluated and approved by the MOST Program Office and the Colorado Department of Revenue, and must meet the requirements for issuing a Colorado driver’s license motorcycle endorsement.⁶⁵

While this seems to be a fairly straightforward process, the recent addition of the curriculum of Total Control Training Incorporated (Total Control) to the MOST Program has highlighted some problems. The terms “review”, “evaluate” and “approve” are not defined in statute or in rule. Thus, the Office’s process for a new curriculum to become a valid MOST Program curriculum is unclear.

Similarly, the process by which the Office and the DMV consult in the approval process is not clearly defined.

Additionally, items must be submitted in a timely manner, and in an acceptable form (i.e., not confidential) in order for the process to move forward.

Finally, a representative of the MOST Program has to participate in a proposed course offering to ensure that it complies with MOST Program rules and standards. If no such courses are offered in-state, then Office staff must locate and attend a course in another state, which can add to the delay in approving a new curriculum.

⁶⁵ 2 CCR § 601-23-7.02, MOST Program Rules.

As a result, it took approximately one year for the Total Control curriculum to be approved and accepted by both the Office and the DMV. Not surprisingly, this created considerable angst and frustration for many of the parties involved.

Since the Total Control curriculum was approved, the MOST Program has approved a fourth curriculum—MSF’s three-wheel basic rider course—and it was approved within a matter of weeks. While this suggests that perhaps some of the details of curriculum approval have been worked out, the overall process could be improved.

Therefore, the Office should reform the process by which it approves any curriculum to be more transparent and timely.

Administrative Recommendation 2 – The Executive Director of CDOT should redouble efforts to recruit a member to the Advisory Board to represent retail motorcycle dealers.

The Executive Director of CDOT (Executive Director) is tasked with appointing 9 of the Advisory Board’s 12 members, including one member to represent retail motorcycle dealers.⁶⁶ However, this seat has proven remarkably difficult to fill. The first member appointed served a short time before resigning in May 2014. The seat remained empty until February 2015. That representative attended a single meeting and the seat has remained empty ever since.

Ordinarily, such a fact pattern might result in a recommendation to repeal the seat. However, if the MOST Program is to continue, the support and involvement of motorcycle dealers may be critical to its success.

Motorcycle dealers are often a consumer’s first contact with the motorcycle community. Motorcycle dealers are in a unique position to emphasize the need for training. They are also in the unique position to report on why some riders choose not to obtain training.

Therefore, the Executive Director should redouble efforts to recruit an Advisory Board member to represent retail motorcycle dealers.

⁶⁶ § 43-5-505(1)(d)(II), C.R.S.

Administrative Recommendation 3 – The Executive Director should redouble efforts to recruit a representative of an insurance industry association, rather than an individual insurance carrier, to represent motorcycle insurance providers on the Advisory Board.

The Executive Director is tasked with appointing 9 of the Advisory Board’s 12 members, including one member to represent motorcycle insurance providers.⁶⁷ Presumably, this seat was created to provide the Advisory Board, and the Office, with the insurance industry’s perspective on motorcycle safety issues. Insurance carriers have a direct pecuniary interest in road safety, including motorcycle safety.

Not surprisingly, in calculating their premium structures, insurance carriers collect and analyze a considerable amount of data related to motorcycle safety. Thus, a representative of the insurance industry could prove to be a considerable asset to the Advisory Board and the Office.

However, the Executive Director has historically appointed insurance producers (popularly known as insurance agents) to this seat, a great many of whom work with a single insurance carrier. This renders the average insurance producer unable to provide the insurance industry perspective. Rather, this individual’s perspective is likely limited to personal experience and to the carrier(s) with which he or she works.

Further, an individual insurance producer lacks the standing to solicit input from the industry at large or to disseminate information in any meaningful way. Thus, the seat has failed to act in the capacity for which it was originally intended.

However, this could be remedied if the Executive Director redoubled his or her efforts to recruit someone from an insurance industry association. These individuals are often in the unique position of being able to speak for a large segment of the industry and as such, can solicit information from and disseminate information to a larger audience.

Therefore, the Executive Director should redouble efforts to recruit a representative of an insurance industry association, rather than an individual insurance carrier, to represent motorcycle insurance providers on the Advisory Board.

Administrative Recommendation 4 – The Office should improve its recordkeeping.

MOST Program rules require MOST Program instructors to submit to the Office, within 72 hours, any incident involving property damage or student injury. However, due to staffing changes, Office staff could not locate these reports and had difficulty confirming their existence.

⁶⁷ § 43-5-505(1)(d)(VIII), C.R.S.

Presumably, such reports are necessary in order to monitor the safety and soundness of the MOST Program vendors and instructors. Without such records, however, it is impossible to determine whether and how often property is damaged or students are injured during MOST Program courses. Such information could be used to identify trends and the possible need for retraining of instructors or trigger a quality assurance inspection.

Additionally, the Office conducted quality assurance inspections prior to fiscal year 14-15, but again, Office staff had difficulty locating many of the records pertaining to these inspections and some could not be located at all. Thus, there are incomplete records documenting the safety and soundness of the various MOST Program vendors or their training ranges. Presumably, all were safe enough to continue operating, but without the historical documentation, follow up items cannot be identified.

Many of these responsibilities will now fall to MSF, as the MOST Program contractor. The Office should take steps to ensure that such records are utilized for their intended purposes and maintained.