



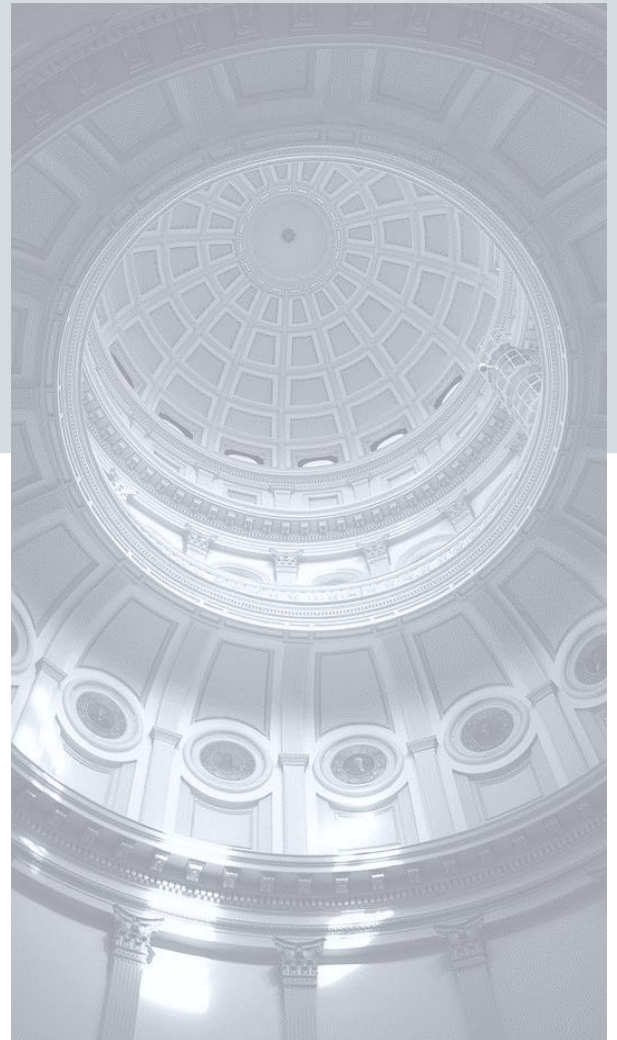
COLORADO

**Department of
Regulatory Agencies**

Colorado Office of Policy, Research &
Regulatory Reform

2019 Sunset Review

Motorcycle Operator Safety Training Program



October 15, 2019



COLORADO

**Department of
Regulatory Agencies**

Executive Director's Office

October 15, 2019

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:

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.

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.

The Colorado Office of Policy, Research and Regulatory Reform (COPRRR), located within my office, is responsible for fulfilling these statutory mandates. Accordingly, COPRRR has completed the evaluation of the Motorcycle Operator Safety Training program. I am pleased to submit this written report, which will be the basis for COPRRR's oral testimony before the 2020 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 Chief of the Colorado State Patrol and staff in carrying out the intent of the statutes and makes recommendations for statutory changes in the event this regulatory program is continued by the General Assembly.

Sincerely,

Patty Salazar
Executive Director





COLORADO

Department of Regulatory Agencies

Colorado Office of Policy, Research &
Regulatory Reform

2019 Sunset Review

Motorcycle Operator Safety Training Program

SUMMARY

What is regulated?

The Colorado State Patrol (CSP) administers the Motorcycle Operators Safety Training (MOST) program. MOST is a voluntary safe riding program that protects the riding public by teaching the basics of safe motorcycle operation.

Why is it regulated?

Colorado's weather, varied topography, and beautiful natural environs make it a popular place to ride a motorcycle. In 2017, Colorado ranked 17th among U.S. states in motorcycle ownership and outpaced several warm weather states where riding is possible year-round. However, motorcycling can be dangerous. Data from 2016 indicate that deaths occurred 28 times more frequently in motorcycle crashes than passenger vehicles. Because motorcycle fatalities occur at a higher rate than automobile fatalities, any training geared toward teaching physical skills and mental awareness is worthwhile. This is especially important for less experienced operators.

How is it regulated?

MOST has three administrative levels to the program structure. MOST Program; The CSP oversees the program; the Motorcycle Safety Foundation (MSF) is the contractor engaged by the CSP that ensures standards and procedures are followed; and approved MOST vendors provide the approved training and services to the students through certified instructors.

Who is regulated?

During fiscal year 17-18, the CSP authorized 18 vendors who instructed students in 41 locations within Colorado.

What does it cost?

In fiscal year 18-19, the first full fiscal year that the CSP administered the program, it spent \$799,750 on program administration and dedicated one full-time equivalent employee.

KEY RECOMMENDATIONS

Continue the Motorcycle Operator Safety Training program for five years, until 2025.

The MOST program is a program in transition. Change has been a constant in the MOST program's recent history. Several changes were made by the General Assembly in 2013, including reinstating the 12-member Motorcycle Operator Safety Advisory Board and scheduling a 2017 sunset review. The program was also involved in multiple lawsuits, had several changes in administrative leadership, and, as of January 2018, the entire operation was transferred from the Colorado Department of Transportation to the CSP in the Department of Public Safety.

Additionally, during the hearings for the sunset review published on October 15, 2016, the General Assembly established a sunset date of September 1, 2020, prompting this review, which began on October 15, 2018. It commenced a mere 10 months following the transfer of the program from one state agency to another and just 24 months following the previous sunset review.

The program needs stability and CSP needs to continue to grow into its role as regulator. Therefore, the General Assembly should continue the MOST program for five years, until 2025. Five years will provide the stability needed and time enough for the CSP to collect the necessary data to perform a more suitable sunset review.

METHODOLOGY

As part of this review, Colorado Office of Policy, Research, and Regulatory Reform staff attended Motorcycle Operator Safety Advisory Board meetings, interviewed representatives from the Colorado Departments of Transportation, Revenue, and Public Safety's Colorado State Patrol Division; interviewed a representative of the National Highway Traffic Safety Administration; interviewed representatives from state and national motorcycle organizations and MOST vendors; reviewed records; and reviewed Colorado statutes and rules.

MAJOR CONTACTS MADE DURING THIS REVIEW

Colorado State Patrol
Colorado Department of Revenue
Colorado Department of Transportation
Harley-Davidson Motor Co
Motorcycle Operator Safety Advisory Board members
Motorcycle Safety Federation
U.S. Department of Transportation, National Highway Traffic Safety Administration

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
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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:

- I. 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;
- II. 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;
- III. 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;
- IV. Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;
- V. 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;
- VI. The economic impact of regulation and, if national economic information is not available, whether the agency stimulates or restricts competition;
- VII. 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;
- VIII. 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(6)(b), C.R.S.

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- IX. Whether the agency through its licensing or certification process imposes any sanctions or disqualifications on applicants based on past criminal history and, if so, whether the sanctions or disqualifications serve public safety or commercial or consumer protection interests. To assist in considering this factor, the analysis prepared pursuant to subsection (5)(a) of this section must include data on the number of licenses or certifications that the agency denied based on the applicant's criminal history, the number of conditional licenses or certifications issued based upon the applicant's criminal history, and the number of licenses or certifications revoked or suspended based on an individual's criminal conduct. For each set of data, the analysis must include the criminal offenses that led to the sanction or disqualification; and
- X. Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.

Sunset reports are organized so that a reader may consider these criteria while reading. While not all criteria are applicable to all sunset reviews, the various sections of a sunset report generally call attention to the relevant criteria. For example,

- In order to address the first criterion and determine whether a particular regulatory program is necessary to protect the public, it is necessary to understand the details of the profession or industry at issue. The Profile section of a sunset report typically describes the profession or industry at issue and addresses the current environment, which may include economic data, to aid in this analysis.
- To ascertain a second aspect of the first sunset criterion--whether conditions that led to initial regulation have changed--the History of Regulation section of a sunset report explores any relevant changes that have occurred over time in the regulatory environment. The remainder of the Legal Framework section addresses the third sunset criterion by summarizing the organic statute and rules of the program, as well as relevant federal, state and local laws to aid in the exploration of whether the program's operations are impeded or enhanced by existing statutes or rules.
- The Program Description section of a sunset report addresses several of the sunset criteria, including those inquiring whether the agency operates in the public interest and whether its operations are impeded or enhanced by existing statutes, rules, procedures and practices; whether the agency performs efficiently and effectively and whether the board, if applicable, represents the public interest.
- The Analysis and Recommendations section of a sunset report, while generally applying multiple criteria, is specifically designed in response to the tenth criterion, which asks whether administrative or statutory changes are necessary to improve agency operations to enhance the public interest.

These are but a few examples of how the various sections of a sunset report provide the information and, where appropriate, analysis required by the sunset criteria. Just as not all criteria are applicable to every sunset review, not all criteria are specifically highlighted as they are applied throughout a sunset review.

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 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 Motorcycle Operator Safety Training (MOST) program and the Chief of the Colorado State Patrol (Chief and CSP, respectively) as enumerated in Part 5 of Article 5 of Title 43, Colorado Revised Statutes (C.R.S.), shall terminate on September 1 2020, 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 MOST program pursuant to section 24-34-104, C.R.S.

The purpose of this review is to determine whether the currently prescribed regulation should be continued and to evaluate the performance of the MOST program and the CSP. During this review, the CSP 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 Motorcycle Operator Safety Advisory Board meetings, interviewed representatives from the Colorado Departments of Transportation, Revenue, and Public Safety; interviewed a representative of the National Highway Traffic Safety Administration; interviewed representatives from state and national motorcycle organizations and MOST vendors; reviewed records; and reviewed Colorado statutes and rules.

Profile

In a sunset review, COPRRR is guided by the sunset criteria located in section 24-34-104(6)(b), C.R.S. The first criterion asks 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.

In order to understand the need for regulation, it is first necessary to understand the environment in which the program exists and any necessary qualifications.

Colorado's weather, varied topography, and beautiful natural environs make it a popular place to ride a motorcycle. In 2017, Colorado ranked 17th among U.S. states in motorcycle ownership and outpaced several warm weather states where riding is possible year-round.²

However, motorcycling can be dangerous. Data from 2016 indicate that deaths occurred 28 times more frequently in motorcycle crashes than passenger vehicles.³ Moreover, motorcyclists accounted for 14 percent of all traffic-related fatalities, while motorcycles represent only 3 percent of registered motor vehicles.⁴ Motorcycles do not offer the types of protections that other vehicles provide. According to the National Highway Traffic Safety Administration (NHTSA), riding a motorcycle takes balance, coordination, and good judgement.⁵ It recommends that riders take precautions such as making sure that riders and motorcycles are road ready, and riders should be properly licensed. Twenty-seven percent of the riders involved in a fatal crash did not have a valid license.⁶

² Statista. *U.S. motorcycle registration estimates in 2016, by state (in units)*. Retrieved September 9, 2019, from <https://www.statista.com/statistics/191002/number-of-registered-motorcycles-in-the-us-by-state/>

³ National Highway Traffic Safety Administration. *Motorcycle Safety, Overview*. Retrieved December 13, 2018, from <https://www.nhtsa.gov/road-safety/motorcycles>

⁴ National Highway Traffic Safety Administration. *Motorcycle Safety, NHTSA in Action*. Retrieved December 13, 2018, from <https://www.nhtsa.gov/road-safety/motorcycles>

⁵ National Highway Traffic Safety Administration. *Motorcycle Safety, Motorcyclist Safety*. Retrieved December 13, 2018, from <https://www.nhtsa.gov/road-safety/motorcycles>

⁶ National Highway Traffic Safety Administration. *Motorcycle Safety, Road Ready*. Retrieved September 9, 2019, from <https://www.nhtsa.gov/road-safety/motorcycles>

NHTSA also recommends:⁷

- Riders and passengers wear proper protection.
 - Wear a helmet meeting the U.S. Department of Transportation, Federal Motor Vehicle Safety Standard 218;
 - Cover arms and legs completely with heavy denim or leather to protect in the event of a crash and prevent dehydration;
 - Wear boots and gloves; and
 - Wear brightly colored clothing.
- Riders ride responsibly.
 - Do not take risks. Most multi-vehicle motorcycle crashes occur when other drivers do not see the motorcycle; and
 - Ride with traffic and leave plenty of room between vehicles.
- Riders be drug and alcohol free.
 - Alcohol and drugs can affect judgment, coordination, alertness, and reduce reaction time.

In Colorado there are two methods to obtain a motorcycle endorsement on a valid driver's license. The first method requires a person to pass a written examination to acquire an instruction permit and then pass a motorcycle driving skills test.

The second method requires a person to complete a Motorcycle Operator Safety Training (MOST) course.⁸ Notwithstanding, every person between 15 and 16 years old who wants the motorcycle endorsement must complete a MOST course and satisfy other qualifications prior to obtaining an instruction permit and a motorcycle endorsement.⁹

The Chief of the Colorado State Patrol (Chief and CSP respectively) administers the MOST program through a contractor and 18 approved vendors located in all regions of the state.¹⁰

The Motorcycle Safety Foundation (MSF) contracts with the CSP to implement the safety program in which the chief goals are advancing safety and enhancing riding. All branches of the U.S. military and 45 states use the MSF's Basic *RiderCourse* curriculum for their motorcycle safety and education programs. The course is a fundamental learn-to-ride curriculum for traditional two-wheel and three-wheel motorcycles. More than eight million motorcyclists have enrolled in the courses and more than 400,000 students take them annually.¹¹

⁷ National Highway Traffic Safety Administration. *Motorcycle Safety, On the Road*. Retrieved September 9, 2019, from <https://www.nhtsa.gov/road-safety/motorcycles>

⁸ Colorado Department of Revenue. *Motorcycle Endorsement*. Retrieved December 19, 2018, from <https://www.colorado.gov/pacific/dmv/motorcycle-endorsement>

⁹ *Colorado Motorcycle Operator's Handbook*, Colorado Department of Revenue (2012), p. 3.

¹⁰ Colorado State Patrol. *MOST Instructors and Classes*. Retrieved June 21, 2019 from <https://www.colorado.gov/pacific/csp/most-instructors-classes>

¹¹ Motorcycle Safety Foundation. *About MSF, History*. Retrieved January 16, 2019 from <https://www.msf-usa.org/AboutMSF.aspx>

The MSF created the original MOST curriculum. In addition to the MSF curriculum, Colorado uses two other approved motorcycle safety curricula. The Evergreen Safety Council developed one curriculum and Total Control Training developed the other.

Legal Framework

History of Regulation

In a sunset review, the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) is guided by the sunset criteria located in section 24-34-104(6)(b), Colorado Revised Statutes (C.R.S.). The first sunset criterion questions 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.

One way that COPRRR addresses this is by examining why the program was established and how it has evolved over time.

The General Assembly created the Motorcycle Operator Safety Training (MOST) program in 1990. The major purposes were to make motorcycle safety training consistent and affordable.

The program was originally placed in what would become the Colorado Department of Transportation's (CDOT) Division of Highway Safety (now the Office of Transportation Safety or Office). Along with standards for training and trainers the original legislation created a five-member advisory committee with a scheduled sunset date of 1996. The advisory committee was sunset at that time.

There were minor changes made over the years until 2013 when 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 (Prior to that participants had to hold a Colorado license or be in the military);
- Required the Office to establish a system to record program performance data, including fatalities among those who have completed a MOST program course;
- Prohibited the expenditure of MOST funds on items such as motorcycles, helmets and textbooks;
- Created the 12-member Motorcycle Operator Safety Advisory Board (MOSAB); and
- Scheduled the MOST program to sunset on September 1, 2017.

COPRRR performed a sunset review that was published on October 14, 2016. The report had one statutory recommendation, to continue the program for five years, and four administrative recommendations all aimed at increasing participation and transparency. The General Assembly took a different tack and moved the program's administration from CDOT to the Chief of the Colorado State Patrol (Chief and CSP respectively) in the Department of Public Safety.

Senate Bill 17-243 is the bill that transferred the functions from CDOT to the CSP. In doing so, it set an effective date of January 1, 2018. It also established a sunset date of September 1, 2020. As a practical administrative matter, this means that this sunset review of the program began, October 15, 2018, less than 10 months after the transfer occurred.

Legal Summary

The second and third sunset criteria question

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; and

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.

A summary of the current statutes and rules is necessary to understand whether regulation is set at the appropriate level and whether the current laws are impeding or enhancing the agency's ability to operate in the public interest.

The Transfer

The MOST program is created in Part 5 of Article 5 of Title 43, C.R.S. Statute directs that on or after January 1, 2018, the Chief must,

[E]xecute, administer, perform, and enforce the rights, powers, duties, functions, and obligations vested prior to January 1, 2018, in the Director and the Office of Transportation Safety within [CDOT] concerning the program.¹²

¹² § 43-5-502.5(1), C.R.S.

Statute further instructs that all rules and orders adopted by CDOT prior to that time continue to be in effect, “until revised, amended, repealed, or nullified pursuant to law.”¹³

In conjunction with the transfer, the General Assembly ordered a sunset review to be published by October 15, 2019, and established a sunset date of September 1, 2020.¹⁴

The Program

The Chief is required to establish a program that promotes motorcycle safety and encourages curricula to teach motorcycle operation. Each vendor/program must train instructors and include the effects of alcohol and drugs on motorcycle operation. The Chief is also mandated to set course certification standards and to make sure that each program follows its standards.¹⁵ Any person who holds a driver’s license from any state, and is able to obtain a motorcycle endorsement, or a person who holds a Colorado instruction permit is eligible to enroll in a MOST class.¹⁶

By September 1 of each year, the Department of Public Safety must report to the Legislative Audit committee and Transportation committees of both the House of Representatives and Senate concerning:¹⁷

- Program effectiveness,
- Annual motorcycle accidents or fatalities,
- Training availability in Colorado,
- Historic and current training costs, and
- Any other performance measures.

The MOST program is cash-funded through the Motorcycle Operator Safety Training fund by fees on each original and renewed motorcycle endorsement, and each motorcycle registration.¹⁸ Gifts, grants, and donations may be accepted for any program-associated purpose.¹⁹ Administrative costs are prohibited from exceeding 15 percent of the total cost of the MOST program.²⁰ Program rules define administrative expenses as expenses related to program salaries, benefits, and operating costs. Administrative operating costs include:²¹

- Daily administrative costs,
- Staff travel costs,

¹³ § 43-5-502.5(2), C.R.S.

¹⁴ § 43-5-307, C.R.S.

¹⁵ § 43-5-502(1)(a)(I), C.R.S.

¹⁶ § 43-5-502(1)(a)(II), C.R.S.

¹⁷ § 43-5-506, C.R.S.

¹⁸ § 43-5-504(1), C.R.S.

¹⁹ § 43-5-504(3), C.R.S.

²⁰ § 43-5-502(1)(e), C.R.S.

²¹ 8 CCR § 1507-56, 3.1.1 Rules and Regulations Concerning the Motorcycle Operator Safety Training (MOST) Program

-
- Capital equipment purchase or lease costs,
 - Office supplies,
 - In-office printing, copying, form reproduction, and
 - Tuition and/or registration costs for program personnel concerning program support activities.

The Chief has designated a program coordinator and adopted rules to implement the program as directed by statute.²² In essence, the statutory provisions that limit the administrative costs and list what those costs encompass, demand that the Chief find a contractor to implement the program.

Instructors

Every basic training course must teach the requirements for acquiring a license endorsement for operating a motorcycle.²³

To become a certified MOST course instructor, an individual must:²⁴

- Be 21 years old;
- Hold a valid Colorado driver's license endorsed for motorcycles;
- Not have the license revoked or suspended within three years of application in any state; and
- Not have been convicted of a driving offense worth eight points or more, or the equivalent violation in another state, within the previous three years.

To remain a certified MOST course instructor beyond initial approval, an instructor must verify that he or she is currently active in the program.

The Motorcycle Operator Safety Advisory Board

The statutes established the MOSAB to make recommendations to the Chief concerning training, program implementation, and how to spend money in the Motorcycle Operator Safety Training Fund.²⁵ The board membership comprises:²⁶

- The CDOT Director or a designee,
- The Department of Revenue Executive Director or a designee,
- The Chief or a designee, and
- Nine members appointed by the Chief including:
 - Two members who represent MOST vendors,
 - One member who represents retail motorcycle dealers,
 - One member who represents third-party testers,

²² See §§ 43-5-502(1)(b), (c), and (d), and 43-5-502.5(2), C.R.S.

²³ § 43-5-502(1)(a) (I.5), C.R.S.

²⁴ §§ 43-5-503(2) and (3)(a), C.R.S.

²⁵ § 43-5-505(2), C.R.S.

²⁶ § 43-5-505(1), C.R.S.

-
- 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 program,
 - One member who represents law enforcement agencies, and
 - One member who represents motorcycle insurance providers.

Beyond tasks concerning recommendations, the MOSAB is required to develop a program-driven mission²⁷ and meet at least quarterly.²⁸

²⁷ § 43-5-505(5), C.R.S.

²⁸ § 43-5-505(6), C.R.S.

Program Description and Administration

In a sunset review, the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) is guided by sunset criteria located in section 24-34-104(6)(b), Colorado Revised Statutes (C.R.S.). The third, fourth and fifth sunset criteria question:

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; and

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.

In part, COPRRR utilizes this section of the report to evaluate the agency according to these criteria.

As of January 1, 2018, the Motorcycle Operator Safety Training (MOST) program is administered by the office of the Chief of the Colorado State Patrol (Chief and CSP respectively), which is a division in the Department of Public Safety.

This "Program Description" section is not typical of a sunset review report. A reader must consider the recent timeline of the MOST program and the sunset review process. A sunset report of the MOST program was published on October 14, 2016. The consequent sunset review hearings were held during the 2017 legislative session. At that time the General Assembly transferred program operations from the Colorado Department of Transportation (CDOT) to the CSP effective January 1, 2018. Subsequent to the transfer of the program, the rules under which the program operated were repealed and reinstated under the CSP on September 30, 2018. This occurred two weeks prior to the commencement of this current sunset review.

A typical sunset review examines program operations for the five most recent fiscal years completed before commencement of the review. This means that the period covered in this review would ordinarily encompass fiscal years 13-14 through fiscal year 17-18. However, since the MOST program was transferred at the halfway point of fiscal year 17-18, virtually all of the data provided, with a few noted exceptions, are based on program operations during the transfer year from CDOT to CSP and may not accurately reflect current operations at CSP. The Colorado Office of Policy, Research, and Regulatory Reform obtained the data, as is typical, from the agency currently under review: CSP, not CDOT.

The MOST program is funded by a \$2 surcharge on motorcycle drivers' license endorsements and a \$4 surcharge on motorcycle registrations. CSP may use up to 15 percent of the revenues for administrative purposes. The remainder is utilized by the program to promote safety and motorcycle awareness.²⁹

Table 1 indicates the program expenditures, including the full-time equivalent (FTE) employees allotted to the program for the fiscal years indicated.

Table 1
MOST Fiscal Information
Fiscal Years 17-18 and 18-19

Fiscal Year	Total Program Expenditures	FTE
17-18 CDOT	\$623,606	1
17-18 CSP	\$569,944	1
18-19 CSP	\$799,750	1

Table 1 indicates that the total program expenditures were approximately one-third lower during the first full year the program was housed in CSP compared to the transfer year. The expenditures are more in line with, and slightly less than, the roughly \$850,000 per year that CDOT expended on program operations. Still, CSP staff believes that it will need to add personnel resources as the program becomes more settled. The current FTE is allotted solely to the Program Coordinator position.

In its first full year of operation, CSP was well under the 15 percent of revenue cap allowed for administrative purposes. Total revenue was \$827,778 and \$107,828 (13 percent) went to administration. However, the Program Coordinator position was vacant for a portion of the fiscal year. The remainder of the expenditures covered contract expenses and vendor-reimbursements.

Administration

According to the MOST Policy and Procedures Agreement, there are three administrative levels to the program structure. The CSP administers the MOST program; the Motorcycle Safety Foundation (MSF) is the contractor engaged by the CSP that develops and ensures training and operational standards and procedures are followed; and approved MOST Vendors provide the approved training and services to the students.³⁰

²⁹ Colorado State Patrol. *MOST Annual Report, State Fiscal Year 2018*. P.23. Retrieved April 9, 2019, from https://www.colorado.gov/pacific/sites/default/files/2018%20MOST%20Annual%20Report_Final.pdf

³⁰ Colorado State Patrol. *Policy and Procedure Manual*. P.2. Retrieved April 4, 2019, from <https://www.colorado.gov/pacific/sites/default/files/CSP%20MOST%20P%26P%20Agreement%2006112018.pdf>

The CSP oversees all aspects of the program including:

- Education and outreach,
- Approval of the contractor and vendors,
- Development and administration of all contracts,
- Development of all policies and procedures, and
- Development of the instructor application and approval process.

The MSF is responsible for:³¹

- Instructor training,
- Training site approval,
- Training site administration,
- Training site inventory,
- Quality assurance reviews,
- MOST instructor certification,
- MOST instructor teaching materials and instructor professional development workshop(s), and
- Training statistic tracking.

The MOST vendors are responsible for ensuring compliance with all MOST policies and procedures concerning:³²

- Basic program requirements,
- Protective gear,
- Training site personnel,
- Training site equipment,
- Quality assurance reviews,
- Emergency notification in case of an incident, and
- Training site reporting.

Quality Assurance

The MSF implements much of its role as the contractor through vendor contact and quality assurance audits/reviews. The on-site reviews ensure that all the basic site and program specifications are covered and embraced by each program. CSP has emphasized both the physical sites and coaching as a focus of the quality assurance reviews. MSF checklist items include range painting and marking as well as motorcycle maintenance.

³¹ Colorado State Patrol. *Policy and Procedure Manual*. P.2. Retrieved April 4, 2019, from <https://www.colorado.gov/pacific/sites/default/files/CSP%20MOST%20P%26P%20Agreement%2006112018.pdf>

³² Colorado State Patrol. *Policy and Procedure Manual*. P.4-12. Retrieved April 4, 2019, from <https://www.colorado.gov/pacific/sites/default/files/CSP%20MOST%20P%26P%20Agreement%2006112018.pdf>

Just as important, another part of the quality assurance audit has been an emphasis on mentoring coaches. Beyond the basics, the auditor engages in active problem solving with the vendors and instructors. This interaction helps the on-site personnel understand not just that compliance with the letter of the law is important, but the spirit and intent of the program as well. With this type of interaction, the goal of an effective safety program, hopefully, can be realized.

Table 2 notes that CSP has made the quality assurance visits a high priority.

**Table 2
Quality Assurance Audits**

Calendar Year	Total Quality Assurance Audits
2017 CDOT	30
2018 CSP	45

Table 2 illustrates that the number of audits increased by 50 percent in the first year that the program was administered by CSP.

Vendors

To become a MOST vendor one must apply to the CSP and satisfy a number of prerequisites, including identifying a need for training in a proposed area/region and obtaining the personnel, equipment, and site to operate. Beyond those basics, a prospective vendor must obtain consent to use an approved curriculum. Currently, there are three approved curriculum providers:³³

- Evergreen Safety Council,
- MSF, and
- Total Control Training.

Table 3 shows the number of approved vendors, the number of approved training locations, as well as the number of students that attended training during the fiscal year the program was transferred.

**Table 3
Vendor Information
Fiscal Year 17-18**

Fiscal Year	Number of Vendors	Number of Locations	Number of Students
17-18	18	41	7,881

³³ Colorado State Patrol. *Checklist and Guidelines, How to Become a MOST Provider (Vendor)*. Retrieved April 8, 2019, from <https://www.colorado.gov/pacific/sites/default/files/Checklist%20how%20to%20become%20MOST%20vendor.pdf>

Instructors

The eighth sunset criterion questions whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action.

In part, COPRRR utilizes this section of the report to evaluate the program according to this criterion.

MOST instructors are responsible for implementing program policies regarding motorcycle safety and program instruction. They examine equipment, provide instruction, ensure the range and classrooms are in good condition, among a myriad of other responsibilities.³⁴

To become an instructor, a candidate must:³⁵

- Be 21 years old,
- Have a valid Colorado driver's license with a motorcycle endorsement and at least three years of licensed riding experience,
- Pass a Colorado Bureau of Investigation background check,
- Submit a current driving record abstract,
- Have a high school or high school equivalency diploma,
- Have no driver license suspension or revocation, and
- Have no alcohol related driving conviction within the three years prior to becoming a MOST Instructor.

As of June 13, 2019, there were 130 instructors registered with MOST.

To maintain certification, instructors are responsible for fulfilling the requirements mandated by the developer of the curriculum he or she teaches and must attend all updates mandated by CSP.³⁶

Safety Campaigns

Education and outreach to promote motorcycle safety awareness is a major component of the MOST program. The safety campaigns advocate three primary messages:³⁷

³⁴ Colorado State Patrol. *Policy and Procedure Manual*. P.12-14. Retrieved April 4, 2019, from <https://www.colorado.gov/pacific/sites/default/files/CSP%20MOST%20P%26P%20Agreement%2006112018.pdf>

³⁵ Colorado State Patrol. *Policy and Procedure Manual*. P.14. Retrieved April 4, 2019, from <https://www.colorado.gov/pacific/sites/default/files/CSP%20MOST%20P%26P%20Agreement%2006112018.pdf>

³⁶ CSP. *Policy and Procedure Manual*. P.15. Retrieved April 4, 2019, from <https://www.colorado.gov/pacific/sites/default/files/CSP%20MOST%20P%26P%20Agreement%2006112018.pdf>

³⁷ Colorado State Patrol. *MOST Annual Report, State Fiscal Year 2018*. P.26. Retrieved April 9, 2019, from, https://www.colorado.gov/pacific/sites/default/files/2018%20MOST%20Annual%20Report_Final.pdf

Get Training: Lack of training is a factor in Colorado's fatal motorcycle crashes. Motorcycle riders were found to be at fault in 7 out of 10 fatal crashes.

Wear Proper Protective Gear: Nearly two-thirds of the riders killed in Colorado last year were not wearing a helmet or were wearing it incorrectly.

Training is a life-long learning process: If you've had no motorcycle training or it has been a few years, safety training classes are available no matter your age or how long you've been riding.

Additionally, the CSP's *Live to Ride* campaign speaks to two other major topics: Obtaining a motorcycle endorsement, to make sure the rider is riding legally, and riding sober. Nationally, 25 percent of motorcyclists involved in fatal crashes in 2016 and 2017 had blood alcohol content over the legal limit, the highest percentage of any vehicle type.³⁸

Motorcycle Operator Safety Advisory Board

The Motorcycle Operator Safety Advisory Board (MOSAB) is a 12-member body that meets quarterly to make recommendations to the CSP on expenditures of funds and increasing MOST efficacy. Its membership represents a variety of perspectives in the motorcycling world.

The MOSAB developed a mission statement and vision for the MOST program. The mission reads:³⁹

Colorado strives to provide a safe motorcycling environment because MOST supports motorcycle training and lifelong learning, along with motorcycle safety awareness to achieve reductions in motorcycle crashes and related injuries and fatalities.

Similarly, the vision to complete that mission reads:⁴⁰

Provide guidance and oversight to ensure all MOST students receive consistent, high-quality motorcycle rider instruction and are taught by well-trained, ethical instructors in an atmosphere that promotes student success and endorses lifelong learning, personal growth and responsible riding, as well as promoting motorcycle safety and awareness.

During 2019, the MOSAB has been working with the Program Coordinator on MOST outreach and motorcycle safety education efforts.

³⁸ Colorado State Patrol. *Most - Motorcycle Safety Training*. Retrieved April 9, 2019, from <https://www.colorado.gov/pacific/csp/most>

³⁹ Colorado State Patrol. *MOST Annual Report, State Fiscal Year 2018*. P.33. Retrieved April 9, 2019, from https://www.colorado.gov/pacific/sites/default/files/2018%20MOST%20Annual%20Report_Final.pdf

⁴⁰ *ibid.*

Collateral Consequences - Criminal Convictions

The ninth sunset criterion requires COPRRR to examine whether the agency under review, through its licensing processes, imposes any sanctions or disqualifications based on past criminal history, and if so, whether the disqualifications serve public safety or commercial or consumer protection interests.

In part, COPRRR utilizes this section of the report to evaluate the program according to this criterion.

No person can be a MOST instructor if he or she has been convicted of a driving offense assigned eight points or more.⁴¹ As of the writing of this sunset review, there have been no instructors rejected by the CSP under this provision.

⁴¹ § 43-5-503(3)(a), C.R.S.

Analysis and Recommendations

The final sunset criterion questions whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest. The recommendations that follow are offered in consideration of this criterion, in general, and any criteria specifically referenced in those recommendations.

Recommendation 1 - Continue the Motorcycle Operator Safety Training program for five years, until 2025.

Sunset reviews are tasked with determining if a program is necessary to protect the health, safety and welfare of the public and if conditions have changed that require program modification.

The Motorcycle Operator Safety Training (MOST) program is a program in transition. In fact, change has been a constant in the MOST program's recent history. The "Program History" section of this sunset report recounts that several changes were made by the General Assembly in 2013, including reinstating the 12-member Motorcycle Operator Safety Advisory Board and scheduling a 2017 sunset review. The program was also involved in multiple lawsuits, had several changes in administrative leadership, and, as of January 2018, the entire operation was transferred from the Colorado Department of Transportation to the Colorado State Patrol (CSP) in the Department of Public Safety.

On top of all the change, during the hearings for the sunset review published on October 14, 2016, the General Assembly also established a sunset date of September 1, 2020, prompting this review, which began on October 15, 2018. It commenced a mere 10 months following the transfer of the program from one state agency to another and just 24 months following the previous sunset review. When a program has been reassigned to a different department, it is similar to establishing a new program. The first several months entail establishing an administration and developing a program culture based on the mission. While many of the stakeholders are in place and active there is no administrative infrastructure, such as personnel, rules, data collection systems, and a functional working culture among stakeholders and groups.

Because there is a dearth of new data to analyze, and a sunset review typically examines data extensively, this review must rely mostly on anecdote and opinion.

Stakeholders repeated quite often that the CSP is paying attention to what is being said and appears to be moving the MOST program in a more positive direction. A spirit and culture of collaboration is being forged and while there are growing pains associated with the move, the program appears more in tune with the ethos of motorcycle safety.

One example of change is that the CSP has worked with the Motorcycle Safety Foundation to develop a robust quality assurance process. The quality assurance inspections attempt to ensure that each vendor and instructor is following the standards of the basic curriculum. While there are those who are not pleased with being held accountable to those standards, there is wide acceptance that it is a positive and necessary process.

There are no hard data that confirm that training makes riders safer. Nonetheless, it is easy to infer that since motorcycle fatalities occur at a higher rate than automobile fatalities, any training geared toward teaching physical skills and mental awareness is worthwhile. This is especially important for less experienced operators. While the MOST program has undergone constant change, the need to train riders to ride safely has not changed. A voluntary program protects the riding public and presents the least restrictive environment conducive to protecting the public interest.

Oversight guarantees that the basics of a standardized core curriculum are adhered to by the vendors. Consumers then know how each program fundamentally approaches safety. The program allows each vendor the liberty to operate based on the needs of its consumers on top of those basics. The freedom the program presents embodies the least restrictive regulation consistent with the public interest, which is consistent with the sunset criteria.

What the program needs at this point is steadiness and CSP needs to continue to grow into its role as the regulator. Therefore, the General Assembly should continue the MOST program for five years, until 2025. Five years will provide the stability needed and time enough for the CSP to collect the necessary data to perform a more suitable sunset review.

Recommendation 2 - Repeal the requirement that an instructor must have a Colorado driver's license.

Eligibility to become a MOST instructor requires, among other things, that a person, “hold a valid Colorado driver's license that is endorsed for motorcycles.”⁴² At face value this provision may not seem like it would cause problems but it does and should be repealed from the MOST statutes.

Vendors do not always open training facilities on a regular schedule. Often, the number of students that desire the MOST training dictates schedules. For example, during the spring and early summer, demand for classes is higher than during the winter months when the weather is often cold and snowy. During certain times, it is difficult for vendors to find a qualified instructor with a Colorado license to teach a class. The majority of MOST-approved instructors do not instruct students as a career.

⁴² § 43-5-503(2), C.R.S.

The solution is to allow instructors who teach a vendor's Colorado-approved curriculum in another state and hold a valid motorcycle license issued by another state, to come to Colorado and instruct students as long as he or she fulfills all of the remaining qualifications. Repealing this provision in the statute will help ensure that students, who desire safety training, will have a better chance to get that training. This change also follows an expansion of the MOST scope made in 2013, which allowed students to come from any state as long as they had a valid driver's license.

It is important to consider that it is legal for any person who has a driver's license issued by another state to drive on Colorado roadways. He or she is thought to be competent to drive because another state assessed his or her ability. What is most important in this situation is that the individual has been qualified to teach an approved safety curriculum, not whether his or her driver's license was issued in Colorado.

The second sunset criterion asks the General Assembly to consider, "whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest." In this case, the public interest goes unsatisfied when there is no safety training available because the statute unnecessarily precludes qualified instructors from instructing simply because they do not hold a Colorado driver's license. This stipulation does not protect Colorado consumers and is overly restrictive.

Therefore, the General Assembly should repeal the requirement that an instructor have a Colorado issued driver's license so qualified instructors from other states are able to instruct Colorado MOST students.