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Articles **Criminal Law**

Handling Criminal or Traffic Citations Issued to Commercial Drivers
by Jonathan M. Abramson

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Criminal charges and traffic citations have collateral consequences that can be detrimental to the holder of a commercial driver's license. The criminal/traffic practitioner must be aware of such consequences and properly advise his or her client.

Commercial drivers are prevalent in the United States. According to the Colorado Department of Revenue, there currently are 227,219 commercial driver's license (CDL) holders in Colorado and 14,032,524 nationwide.¹ The criminal or traffic practitioner must exercise great caution in representing a client who maintains a CDL to prevent the loss of the client's CDL—a loss that is almost always devastating to the client's livelihood. For example, traffic citations issued to a commercial driver might adversely affect the driver's employment. Practitioners must ensure that their commercial driver clients are properly

advised of this and other collateral consequences associated with criminal or traffic violations. The failure to do so may render the representation constitutionally ineffective and expose counsel to a potential malpractice suit.

Although it might seem that collateral consequences are largely a matter of individual state law, most of the consequences to commercial drivers convicted of traffic-related offenses are based on federal law. This article briefly discusses the relevant Colorado law and then provides an overview of the federal statutes and regulations affecting CDLs.

Colorado-Specific Licensure Consequences

Any driver of a commercial motor vehicle (CMV) is required to have a CDL. A CMV is defined as:

- 1) any vehicle used in commerce with a gross weight rating of 26,001 pounds or more;
- 2) any vehicle that is designed to transport sixteen or more passengers, including the driver; or
- 3) any vehicle that is transporting hazardous materials and is required to be placarded in accordance with 49 C.F.R. part 172, subpart F.²

In Colorado, the state regulations regarding CDLs are set forth in the Commercial Driver's License Act, Title 42, Section 2, Part 4 (Act).

The Act addresses grounds for denial, suspension, revocation, and disqualification of CDL and non-CDL holders. Many of these grounds also are addressed by the applicable federal regulations. Such grounds pertaining to CDL holders include:³

- 1) driving, operating, or being in actual physical control of a CMV while having any alcohol in his or her system, or refusing to submit to a test to determine the alcoholic content of the driver's blood or breath while driving a commercial vehicle;⁴
- 2) possessing or knowingly transporting a schedule I drug or other substance identified in 49 C.F.R. chapter III, subchapter B, appendix D, an amphetamine, a narcotic drug, a formulation of an amphetamine, or a derivative of a narcotic drug while operating a commercial vehicle during on-duty time;⁵
- 3) a conviction for driving under the influence (DUI), DUI *per se*, driving while ability impaired (DWAI), habitual user, or a substantially similar law of any other state pertaining to drinking and driving, or an administrative determination of CRS § 42-2-126(3)(a) or (3)(b);⁶ or
- 4) a conviction for violating Colorado's railroad crossing statutes or a substantially similar law of any other state.

The Act also provides that a person who operates a CMV in violation of an out-of-service order commits a class 1 traffic misdemeanor.⁷ (Out-of-service violations involve drivers who are not supposed to be driving for a particular period of time, and are discussed below.)

Furthermore, statute mandates that a court cannot accept a plea of guilty to another offense from a person charged with operating a CMV in violation of an out-of-service order, unless the prosecuting attorney makes a good faith representation that there is no *prima facie* case for the original charge.⁸ This makes plea bargaining out-of-service charges difficult, if not impossible.

Federal Motor Carrier Safety Act and Regulations

When representing a commercial driver charged with a criminal or traffic violation, practitioners must be familiar with the Colorado-specific consequences set forth in CRS Title 42, as well as with the Federal Motor Carrier Safety Regulations (FMCSR).⁹ It is essential to be well versed in both Colorado and federal regulations, because Colorado has specifically authorized the adoption of federal statutes, rules, policies, administrative customs or practices, and licensing sanctions governing CMV safety.¹⁰

The section of the FMCSR that is particularly applicable to the representation of a commercial driver is Part 383—Commercial Driver’s License Standards; Requirements and Penalties.¹¹ This section addresses four general categories of regulation: revocation or suspension of CDLs (1) for major offenses; (2) for serious offenses; (3) for offenses related to railroad crossings; and (4) for violations of out-of-service orders. The major and serious offenses are based on convictions in any state. A conviction is defined as:

an unvacated adjudication of guilty, or a determination that a person has violated or failed to comply with the law in a court of original jurisdiction or by an authorized administration tribunal, an unvacated forfeiture of bail or collateral deposited to secure the person’s appearance in court, a plea of guilty or *nolo contendere* accepted by the court, the payment of a fine or court cost, or violation of a condition of release without bail, regardless of whether or not the penalty is rebated, suspended, or probated.¹²

Generally, in Colorado, when a defendant fails to appear for a traffic matter, an outstanding judgment warrant is issued, which results in suspension of the defendant’s driver’s license. Loss of one’s regular license also results in loss of a CDL. When and if the defendant appears in court, the outstanding judgment warrant can be set aside and the defendant’s driver’s license can be reinstated. There are courts in Colorado that enter a default judgment when a defendant fails to appear on a traffic citation. Unless the defendant can successfully move to have the default judgment set aside, the default judgment constitutes a conviction and is transmitted to the Department of Revenue, Division of Motor Vehicles (DMV).

The above definition of conviction does not address diversion programs, deferred prosecutions, and deferred judgments. Such dispositions could be construed to violate federal regulations prohibiting the masking of convictions. Federal regulations provide:

The State must not mask, defer imposition of judgment, or allow an individual to enter into a diversion program that would prevent a CDL driver’s conviction for any violation, in any type of motor vehicle, of a State or local traffic control law (except a parking violation) from appearing on the driver’s record, whether the driver was convicted for an offense committed in the State where the driver is licensed or another State.¹³

Major Offenses

The FMCSR set forth the following nine major offenses:¹⁴

- 1) DUI or DWAI, as prescribed by state law;
- 2) driving under the influence of a controlled substance;
- 3) having a blood alcohol level of more than 0.04 while operating a commercial vehicle;
- 4) refusing to take an alcohol test as required by a state or jurisdiction under its implied consent laws or regulations;
- 5) leaving the scene of an accident;
- 6) using a commercial vehicle to commit a felony;
- 7) driving a CMV when, as a result of prior violations committed while also operating a CMV, the driver's CDL is revoked, suspended, or cancelled, or the driver is disqualified from operating a commercial vehicle;
- 8) causing a fatality through the negligent operation of a CMV, including but not limited to the crimes of motor vehicle manslaughter, homicide by motor vehicle, and negligent homicide; and
- 9) using a vehicle in the commission of a felony involving manufacturing, distributing, or dispensing a controlled substance.

Being convicted a first time of any of these major offenses (not including numbers 4 and 9) results in an automatic loss of the CDL for at least one year.¹⁵ DUI/DWAI by refusal carries an automatic three-year loss.¹⁶ Using a CMV to commit a felony involving the manufacture, distribution, or dispensing of a controlled substance carries a CDL loss for life, not eligible for a ten-year reinstatement.¹⁷ A first offense of any other provision carries a one-year loss.¹⁸ A second conviction of any major offense results in the lifetime loss of the CDL.¹⁹

These are federal definitions. Thus, the regulations also set forth what state violations constitute federal violations. For example, under federal regulations, a driver operating under the influence is prescribed by state law.²⁰ In Colorado, for the purpose of CDL holders, a conviction of DWAI is treated as DUI.²¹

It is critical to note that some but not all of these federal regulations may be violated by a commercial driver's conduct while driving a noncommercial vehicle. In particular, a commercial driver commits a major offense if he or she is convicted of DUI/DWAI, driving under the influence of drugs, or leaving the scene of an accident, even if the violation is committed in a non-commercial vehicle. The other four major violations occur only when driving a commercial vehicle. Moreover, if a driver loses a regular driver's license, he or she also is disqualified from operating a CMV.

Serious Traffic Offenses

When representing a commercial driver, the practitioner should be cautious of seemingly benign traffic offenses. The FMCSR define other, less egregious offenses as serious traffic offenses.²² Serious offenses consist of a driver being convicted of:²³

- 1) speeding excessively, involving any speed of 15 miles per hour or more above the posted speed limit;
- 2) driving recklessly, as defined by state or local regulation, including but not limited to offenses of driving a motor vehicle in willful or wanton disregard of the safety of persons or property;
- 3) making improper or erratic lane changes;
- 4) following a vehicle too closely;
- 5) violating state or local law relating to motor vehicle traffic control (other than a parking violation) arising in connection with a fatal accident;
- 6) driving a CMV without obtaining a CDL;
- 7) driving a CMV without a CDL in the driver's possession;²⁴ and
- 8) driving a CMV without the proper class of CDL and/or endorsements for the specific vehicle group being operated or for the passengers or type of cargo being transported.

A single conviction of any of these offenses, or even multiple violations in a single incident, have no federal consequences. A second conviction of any serious traffic offense in a separate incident within three years after the first conviction results in an automatic sixty-day suspension of the CDL.²⁵ A third or subsequent conviction under this provision results in a 120-day CDL disqualification.²⁶

As with major offenses, some serious traffic offenses are defined as involving CMVs (the last three listed above), but many are not (the first five listed above). In other words, a commercial driver can lose his or her CDL by being convicted of more than one serious traffic violation, even if none involved the operation of a CMV. Additionally, a second conviction of any combination of a serious traffic offense in a separate incident within a three-year period while operating a non-CMV results in a CDL holder being disqualified from operating a CMV for sixty days, if the conviction results in the revocation, cancellation, or suspension of the CDL holder's license or non-CMV driving privilege.²⁷

Accordingly, even when faced with what seems to be the most innocuous of charges, and even if all charges arise out of the operation of the family car, the practitioner always should inquire whether his or her client has a CDL. If so, the attorney should carefully inspect the client's driving record for the past several years to determine whether another serious traffic conviction will put the CDL at risk.

Railroad Crossing Violations

Railroad crossing violations can have serious implications for commercial drivers. The

FMCSR define the following railroad crossing violations:²⁸

- 1) the driver is not required to always stop, but fails to slow down and check that tracks are clear of an approaching train;
- 2) the driver is not required to always stop, but fails to stop before reaching the crossing, if the tracks are not clear;
- 3) the driver is always required to stop, but fails to stop before driving onto the crossing;
- 4) the driver fails to have sufficient space to drive completely through the crossing without stopping;
- 5) the driver fails to obey a traffic control device or the directions of an enforcement official at the crossing;
- 6) the driver fails to negotiate a crossing because of insufficient undercarriage clearance.

These provisions apply to violations of state or municipal law while operating a CMV.

A first conviction results in a CDL disqualification for at least sixty days.²⁹ A second conviction within a three-year period results in a disqualification for at least 120 days.³⁰ A third or subsequent conviction within a three-year period results in disqualification for at least one year.³¹

Out-of-Service Orders

Another major area of regulation under the FMCSR is the out-of-service violation. There are three categories of out-of-service orders: (1) when the driver is placed out of service; (2) when the vehicle is placed out of service; and (3) when the motor carrier is placed out of service. An out-of-service violation occurs when the driver operates the CMV after the driver, vehicle, or motor carrier is placed out of service.

Driver placed out of service. A driver may be placed out of service for alcohol violations, time violations, and imminent hazard violations. Apart from any alcohol-related conviction, a driver can be placed out of service if the driver:³²

- 1) has used alcohol within four hours of going on duty or operating or having physical control of a CMV;³³
- 2) has any measured alcohol concentration or detected presence of alcohol while on duty or operating or having physical control of a CMV;³⁴
- 3) is on duty or operates a CMV while in possession of alcohol for personal use;³⁵
- 4) drives, operates, or is in physical control of a CMV and refuses to submit to a test to determine the alcoholic content of his or her blood or breath.³⁶

A driver also can be placed out of service for violating FMCSR maximum hours of service regulations. In particular, a driver of a property-carrying CMV (regardless of whether it is empty) cannot:³⁷

- 1) drive more than eleven cumulative hours following ten consecutive hours off duty;
- 2) be on duty more than sixty hours in any period of seven consecutive days, if the employing motor carrier does not operate CMVs every day of the week;
- 3) be on duty more than seventy hours in any period of eight consecutive days, if the employing motor carrier operates CMVs every day of the week.

A driver of a passenger-carrying CMV cannot:³⁸

- 1) drive for more than ten hours following eight consecutive hours off duty;
- 2) be on duty fifteen hours following eight consecutive hours off duty;
- 3) be on duty more than sixty hours in any period of seven consecutive days, if the employing motor carrier does not operate CMVs every day of the week;
- 4) be on duty more than seventy hours in any period of eight consecutive days, if the employing motor carrier operates CMVs every day of the week.

A commercial driver may be placed out of service on a determination that the driver poses an imminent hazard to public safety.³⁹ This determination is made by law enforcement officials, including U.S. Department of Transportation (DOT) agents at ports of entry. The term "imminent hazard" as it pertains to a driver means "any condition of vehicle, employee, or commercial motor vehicle operations which substantially increases the likelihood of serious injury or death if not discontinued immediately."⁴⁰

Motor vehicle and motor carrier placed out of service. A motor vehicle is placed out of service for mechanical and imminent hazard violations. A CMV may be placed out of service if, because of its mechanical condition or loading, it likely would cause an accident or a breakdown.⁴¹ A CMV or motor carrier can be placed out of service if it poses an imminent hazard to safety. The definition of "imminent hazard," as it pertains to a CMV and motor carrier means "any condition of vehicle . . . or commercial motor vehicle operations which substantially increases the likelihood of serious injury or death if not discontinued immediately."⁴² This generally is determined by DOT agents or state patrol at ports of entry conducting inspections.

Consequences for violation of out-of-service order. The FMCSR provide that a commercial driver, while operating a CMV, convicted of violating an out-of-service order while transporting non-hazardous materials will be disqualified from operating a CMV for at least 180 days and no longer than one year.⁴³ For a second conviction within a ten-year period, the driver will be disqualified for at least two years but no longer than five years.⁴⁴ For a third or subsequent conviction within a ten-year period, the driver will be disqualified for at least three years but no longer than five years.⁴⁵

Convictions for violations of out-of-service orders while transporting hazardous materials have even greater ramifications for the professional driver and his or her employer. A first

out-of-service conviction while transporting hazardous materials carries a disqualification for at least 180 days, but no longer than two years.⁴⁶ A second violation within a ten-year period will result in a disqualification of at least three years, but no longer than five years.⁴⁷ A third conviction for violating an out-of-service order while transporting hazardous materials within ten years mandates a disqualification of at least three years but no longer than five years.⁴⁸ Citations for violating out-of-service orders can be issued to the driver,⁴⁹ the vehicle,⁵⁰ and the motor carrier employer.

Employment Consequences

The practitioner also should be aware that many motor carriers have written (and unwritten) policies regarding progressive discipline relating to traffic citations. One policy that is common in the industry is the "three in three" policy. If a driver accumulates three non-serious traffic violations during a period of three years, that driver may be subject to termination. Accordingly, a practitioner should ask about a client's motor carrier employer's progressive discipline policy. A traffic citation also may result in the cancellation of insurance coverage by the employer's insurer.

Importantly, the number and nature of violations may well affect future employment opportunities. A prospective employer generally will review a prospective driver's motor vehicle history before hiring a driver. Now, a prospective employer will have access to the Federal Motor Carrier Safety Administration (FMCSA) Pre-Employment Screen Program. In May 2010, the FMCSA launched its Pre-Employment Screening Program, which allows commercial motor carrier companies, as part of the hiring process, to electronically access detailed driving records, which include roadside inspection and crash records. The Pre-Employment Screening Program provides motor carriers access to up to five years of a prospective employee's crash data and three years of roadside inspection data, regardless of the state or jurisdiction.⁵¹

Civil Liability Considerations

The practitioner should exercise caution in representing a commercial driver in a criminal or traffic matter involving an accident, especially when the accident involved bodily injury. In Colorado, traffic convictions generally are inadmissible in civil actions for any purpose, including habit, custom, and pattern of disregarding traffic regulations,⁵² unless the offender is a habitual traffic offender.⁵³ This rule of exclusion applies only to traffic offenses under Title 42, Article 4; convictions of other criminal offenses involving motor vehicles (vehicular homicide, for example) are governed by CRS § 13-90-101. Of course, just as in any criminal or other case, practitioners must give serious consideration before allowing a commercial driver to testify in a traffic trial, when that testimony might be used in a subsequent civil matter.

Compliance, Safety, Accountability Program

In December 2010, the FMCSA implemented a new regulatory safety program called Compliance, Safety, Accountability (CSA), which includes data collection.⁵⁴ The FMCSA launched a test of the new program in Colorado, Delaware, Georgia, Kansas, Maryland, Minnesota, Missouri, Montana, and New Jersey.⁵⁵ FMCSA describes CSA as:

[A]n initiative to improve large truck and bus safety and ultimately reduce crashes,

injuries, and fatalities that are related to commercial motor vehicles. It introduces a new enforcement and compliance model that allows FMCSA and its State Partners to contact a larger number of carriers earlier in order to address safety problems before crashes occur.⁵⁶

Using the Safety Measurement System (SMS) CSA

quantifies the on-road safety performance of carriers and drivers to identify candidates for interventions, determine the specific safety problems the a carrier or driver exhibits, and to monitor whether safety problems are improving or worsening.⁵⁷

SMS will monitor motor carrier and driver safety behaviors through Behavior Analysis and Safety Improvement Categories (BASICs). BASICs consists of safety behaviors. According to the FMCSA, the BASICs represent behaviors that likely will lead to motor vehicle crashes.⁵⁸ The categories are: (1) unsafe driving; (2) fatigued driving (determined based on hours of service); (3) driver fitness; (4) controlled substances/alcohol use; (5) vehicle maintenance; (6) cargo-related; and (7) crash indicator.⁵⁹

Under CSA, a driver's violations will affect a motor carrier's BASICs score. If a motor carrier's BASICs score is above a certain percentile, an FMCSA "carrier intervention" may be triggered. Furthermore, motor carriers and the general public will be able to access a motor carrier's BASICs score, inspection reports, and a list of violations.⁶⁰ The safety rating is calculated using the SMS methodology.⁶¹ SMS uses formulas calculated by inputting violations and their assigned severity weights. Violations are assigned severity weights to reflect the relative crash risk of each violation within its category. For example, in the unsafe driving category, a reckless driving violation carries a violation severity weight of ten, compared to an improper turn violation, which carries a violation severity weight of five.⁶² Accordingly, a commercial driver's citations not only affect the individual driver but also his or her motor carrier employer. Also, the SMS counts violations regardless of whether a citation is issued or there is an eventual conviction.⁶³ A driver or motor carrier can challenge the information in FMCSA databases.⁶⁴ Because a commercial driver's citations can adversely affect a motor carrier, a motor carrier is well advised to exercise caution in how its drivers handle their citations, and to obtain the assistance of legal counsel in many circumstances. Many jurisdictions offer automatic reductions of penalties for citations if the citations are paid in a timely manner. Commercial drivers and motor carriers should carefully consider the adverse consequences of paying such citations before doing so. Motor carriers should consider counseling drivers not to submit payment on a citation prior to consulting with the motor carrier.

Special Considerations for Plea Bargaining

When representing a commercial driver, a practitioner may be required to educate a prosecutor on the varied and numerous collateral consequences associated with traffic and criminal convictions. A prosecutor may be willing to deviate from a standard plea offer if it is clear that the standard plea agreement will compromise a client's ability to earn a living. In many instances, for non-alcohol-related offenses, prosecutors may be more concerned with the number of points associated with a traffic plea than the actual offense to which the defendant is pleading. For example, as discussed above, following too closely⁶⁵ is classified as a serious traffic violation under the FMCSR. In Colorado, following too closely is a four-point offense. If a prosecutor is intent on having a client plead guilty to a four-point

offense, a commercial driver might be better served by pleading guilty to an improper backing charge (two points) plus an operating an unsafe vehicle charge (two points), instead of pleading guilty to following too closely.⁶⁶

In some instances, the collateral consequences of a proposed plea bargain may result in a recommendation from the practitioner that the client take his or her chances at trial. For example, in Colorado, DUI and DWAI are treated similarly for the purpose of restraints and sanctions against commercial driving privileges.⁶⁷ Accordingly, because DUI or DWAI would be equally consequential to an individual's commercial driving privileges, a commercial driver may choose to proceed to trial rather than plead guilty to DWAI. As discussed above, a second alcohol conviction results in a lifetime loss of a CDL. If a commercial driver is facing a second DUI charge, he or she may opt to face the uncertain results of trial rather than a certain lifetime loss of a CDL associated with a guilty plea to DUI or DWAI.

Failure to Properly Advise Client

Colorado's appellate courts have not yet addressed the issue of whether the failure of counsel to advise a client of DMV or CDL consequences of guilty pleas constitutes ineffective assistance of counsel. At least one county court judge has suggested that such advice is a necessary part of the effective representation of a commercial driver charged with a traffic offense.⁶⁸

Colorado courts have held that a defendant may be denied effective assistance of counsel when counsel fails to investigate or provides erroneous advice on the collateral consequence of a plea.⁶⁹ A collateral consequence has been defined as "contingent on a future event, the occurrence of which is unknown when the defendant is sentenced."⁷⁰

In *People v. Pozo*,⁷¹ the Colorado Supreme Court addressed an attorney's duty to advise a client regarding collateral consequences—the immigration consequences of a felony plea. The Court held that the duty depends on whether (1) "the body of law was relevant to the circumstances of the client and the matters for which the attorney was retained"; and (2) the attorney "had reason to believe that the area of law in question was relevant to the client and the client's legal problems" and could "significantly affect" the client's decision to plead guilty.⁷² If so, the attorney has a duty to investigate and advise the client accordingly. The Court held in *Pozo* that it is a "fundamental principle that attorneys must inform themselves of material legal principles that may significantly impact the particular circumstances of their clients."⁷³ The *Pozo* test suggests that an attorney who fails to advise a commercial driver client of the risks to his or her commercial license posed by a traffic plea may well be acting below the required constitutional level of effectiveness.

Quite apart from the issue of effectiveness, a competent attorney should realize the consequences of motor vehicle violations, particularly those consequences related to a commercial driver, because such consequences are relevant to a client facing charges and could significantly affect a client's decision to plead guilty. As one county court judge stated:

[S]uch advice is a necessary part of the effective representation of a client charged with a traffic offense. First, while the consequences may be deemed "indirect," the fact is that they are inevitable. Effective representation therefore demands recognition of these consequences. Second, these collateral consequences are often more significant than the direct consequences. The loss of one's license to drive is

frequently a far more serious consequence than the imposition of a fine, or even the imposition of a jail sentence.⁷⁴

The loss of one's license is particularly critical when one's livelihood is based on his or her ability to drive a CMV.

Conclusion

If a client charged with any kind of traffic offense holds a CDL, a practitioner must exercise caution to ensure that the client is properly advised of the collateral consequences associated with traffic or criminal violations. The practitioner should be familiar with the applicable federal regulations pertaining to commercial drivers.

Notes

1. This figure is based on the number of pointers in the Commercial Driver's License Information System (CDLIS). CDLIS is a commercial driver database containing identifying data for all commercial drivers, which operates a pointer system of commercial driver's license (CDL) holders nationwide. According to the Colorado Department of Revenue, there currently are 227,219 Colorado pointers and 14,032,524 pointers nationwide.
2. CRS § 42-2-402(4)(a); 49 C.F.R. § 383.5.
3. CRS § 42-2-405(3)(b).
4. CRS § 42-2-405(2).
5. *Id.*
6. CRS § 42-2-405(3)(a).
7. CRS § 42-2-405.5(1).
8. CRS § 42-2-405.5(2).
9. Title 49 of the Code of Federal Regulations.
10. CRS § 42-2-403.
11. 49 C.F.R. §§ 383 *et seq.*
12. 49 C.F.R. § 383.5.
13. 49 C.F.R. § 384.226.
14. 49 C.F.R. § 383.51(b).
15. *Id.*

16. 49 C.F.R. § 383.51(b).

17. 49 C.F.R. § 383.51(a)(5) provides:

A state may reinstate any driver disqualified for life for offenses described in paragraphs (1) through (b)(8) of this section (Table 1 to § 383.51) after 10 years if that person has voluntarily entered and successfully completed an appropriate rehabilitation program approved by the State.

18. 49 C.F.R. § 383.51(b).

19. *Id.*

20. *Id.*

21. CRS § 42-2-405(3)(a).

22. 49 C.F.R. § 383.51(c).

23. *Id.*

24. Any individual who provides proof to the enforcement authority that issued the citation, by the date the individual must appear in court or pay any fine for such a violation, that the individual held a valid CDL on the date the citation was issued, is not guilty of this offense.

25. 49 C.F.R. § 383.51(c).

26. *Id.*

27. 49 C.F.R. § 383.51(c), Table 2.

28. 49 C.F.R. § 383.51(d).

29. *Id.*

30. *Id.*

31. *Id.*

32. 49 C.F.R. § 392.5.

33. 49 C.F.R. § 392.5(a)(1).

34. 49 C.F.R. § 392.5(a)(2).

35. 49 C.F.R. § 392.5(a)(3).

36. CRS § 42-2-405(1)(a).

37. 49 C.F.R. § 395.3.
38. 49 C.F.R. § 395.5.
39. 49 C.F.R. § 386.72.
40. 49 C.F.R. § 386.72(b)(1).
41. 49 C.F.R. § 396.9(c).
42. 49 C.F.R. 386.72.
43. 49 C.F.R. § 383.51(e).
44. *Id.*
45. *Id.*
46. *Id.*
47. *Id.*
48. *Id.*
49. 49 C.F.R. § 395.13.
50. 49 C.F.R. § 396.9(c).
51. See www.psp.fmcsa.dot.gov/Pages/FAQ.aspx.
52. CRS § 42-4-1713.
53. *Id.*
54. Many details and logistics regarding the Compliance, Safety, Accountability program still are changing.
55. "What is the Timeline for CSA," available at csa.fmcsa.dot.gov/about/csa_when.aspx.
56. "About CSA: What Is It?" available at csa.fmcsa.dot.gov/about.
57. "How Does CSA Work?: Measurement," available at csa.fmcsa.dot.gov/about/basics.aspx.
58. *Id.*
59. *Id.*
60. How Does CSA Work?: Intervention," available at

csa.fmcsa.dot.gov/about/interventions.aspx.

61. Volpe, "Comprehensive Safety Analysis 2010: Safety Measurement System Methodology, Version 2.0" (Aug. 2010), available at csa2010.fmcsa.dot.gov/documents/SMSMethodology.pdf.

62. *Id.* at Table 1, Unsafe Driving.

63. *Id.* at 2-3.

64. "About CSA: What Is It?" *supra* note 56.

65. CRS § 42-4-1008.

66. 49 C.F.R. § 384.226 provides that a state

must not mask, defer imposition of judgment, or allow an individual to enter into a diversion program that would prevent a CDL driver's conviction for any violation, in any type of motor vehicle, of a State or local traffic control law (except a parking violation) from appearing on the driver's record, whether the driver was convicted for an offense committed in the State where the driver is licensed or another State.

67. CRS § 42-2-405(3).

68. Anderson *et al.*, *Colorado DUI Benchbook* § 8.3.9 (3d ed., 2010 supp.).

69. *See, e.g., People v. Garcia*, 815 P.2d 937 (Colo. 1991) (counsel erroneously advised defendant a guilty plea would not waive his civil claim for false arrest); *People v. Pozo*, 746 P.2d 523 (Colo. 1987) (counsel failed to advise defendant of deportation and immigration consequences of entering a guilty plea); *People v. Nguyen*, 80 P.3d 903 (Colo.App. 2003) (counsel should have investigated relevant law surrounding entry of a felony guilty plea where he knew defendant was a legal resident alien).

70. *People v. Jackson*, 109 P.3d 1017, 1021 (Colo.App. 2004).

71. *Pozo*, *supra* note 69.

72. *Id.* at 527-28.

73. *Id.* at 529.

74. Anderson, *supra* note 68 at § 8.3.9.