



Dora
Department of Regulatory Agencies

Office of Policy, Research and Regulatory Reform

2013 Sunset Review: Regulation of Outfitters

October 15, 2013





Executive Director's Office

Barbara J. Kelley
Executive Director

John W. Hickenlooper
Governor

October 15, 2013

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 mission of the Department of Regulatory Agencies (DORA) is consumer protection. As a part of the Executive Director's Office within DORA, the Office of Policy, Research and Regulatory Reform seeks to fulfill its statutorily mandated responsibility to conduct sunset reviews with a focus on protecting the health, safety and welfare of all Coloradans.

DORA has completed the evaluation of the regulation of outfitters. I am pleased to submit this written report, which will be the basis for my office's oral testimony before the 2014 legislative committee of reference. The report is submitted pursuant to section 24-34-104(8)(a), of the Colorado Revised Statutes (C.R.S.), which states in part:

The department of regulatory agencies shall conduct an analysis of the performance of each division, board or agency or each function scheduled for termination under this section...

The department of regulatory agencies shall 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 report discusses the question of whether there is a need for the regulation provided under Article 55.5 of Title 12, C.R.S. The report also discusses the effectiveness of the Division of Professions and Occupations and staff 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,

Barbara J. Kelley
Executive Director





John W. Hickenlooper
Governor

Barbara J. Kelley
Executive Director

2013 Sunset Review: Regulation of Outfitters

Summary

What Is Regulated?

The Outfitters and Guides Act (Act) provides regulatory oversight of registered outfitters. Generally, outfitters provide services to consumers, which include accompanying them on hunting and fishing trips on public and private lands. Outfitters may provide consumers amenities such as tents, cabins and other supplies.

Why Is It Regulated?

The purpose of the Act is to provide protection to consumers who utilize outfitters on hunting and fishing excursions.

Who Is Regulated?

In fiscal year 11-12, there were 805 registered outfitters.

How Is It Regulated?

The Act is enforced by the Director of the Division of Professions and Occupations (Director and Division, respectively) within DORA. The Director is responsible for, among other things, imposing discipline, rulemaking and policymaking. In order to become registered, the Act requires outfitters to possess minimum liability insurance coverage in the amount of \$50,000 for bodily injury to one person in any single accident and \$100,000 for bodily injury to all persons in any single accident, secure a \$10,000 surety bond and submit verification of first aid training.

What Does It Cost?

In fiscal year 11-12, the total expenditures for the oversight of registered outfitters were \$123,282, and in fiscal year 12-13, there were 1.0 full-time equivalent employees associated with this regulatory oversight.

What Disciplinary Activity Is There?

In fiscal year 11-12, there were 10 disciplinary actions taken against outfitters. The Director also imposed two fines on outfitters, totaling \$1,500.

Key Recommendations

Continue the Act for 11 years, until 2025.

The purpose of the Act is to provide protection to consumers who utilize the services of outfitters for hunting and fishing excursions. The surety bond, insurance and first aid requirements serve to insulate consumers from harm. As such, the General Assembly should continue the regulation of outfitters for 11 years, until 2025.

Require outfitters that have their registrations revoked to wait two years before applying for a new registration.

Currently, the Act authorizes the Director to revoke an outfitter's registration; however, the Act does not require that outfitters wait to apply for a new registration. As a result, an outfitter could apply for a new registration the very day that a revocation order becomes effective. This not only poses a risk to the public, but also requires the Division to incur additional expenses in processing the new application and, if it is denied and appealed, additional legal expenses in defending the denial. As such, the General Assembly should require outfitters that have their registrations revoked by the Director to wait two years before applying for a new registration.

Major Contacts Made During This Review

U.S. Bureau of Land Management
Colorado Outfitters Association
Colorado Division of Parks and Wildlife
Colorado State Land Board
Department of Regulatory Agencies, Division of Professions and Occupations
Outfitter Advisory Committee Members

What is a Sunset Review?

A sunset review is a periodic assessment of state boards, programs, and functions to determine whether or not 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:
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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 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 via DORA's website at: www.dora.colorado.gov/opr.

The regulatory functions of the Director of the Division of Professions and Occupations (Director and Division, respectively), which is housed within DORA, with respect to regulation of outfitters pursuant to the Outfitters and Guides Act, shall terminate on July 1, 2014, unless continued by the General Assembly. During the year prior to this date, it is the duty of DORA to conduct an analysis and evaluation of the administration of this program by the Director pursuant to section 24-34-104, C.R.S.

The purpose of this review is to determine whether the currently prescribed regulation of outfitters should be continued for the protection of the public and to evaluate the performance of the Director and staff. During this review, the Division staff must demonstrate that the regulation serves to protect the public health, safety or welfare, and that the regulation is the least restrictive regulation consistent with protecting the public. DORA's findings and recommendations are submitted via this report to the Office of Legislative Legal Services.

Methodology

As part of this review, DORA staff attended Outfitter Advisory Committee meetings, interviewed the Director and staff, reviewed Director records and minutes including complaint and disciplinary actions, interviewed officials with state professional associations, reviewed Colorado statutes and Division rules, and reviewed the laws of other states.

Profile of the Profession

The Director provides regulatory oversight of registered outfitters. Generally, outfitters provide services to consumers, which include accompanying them, and assisting them, on hunting and fishing trips on public or private lands. More specifically, outfitting services are defined as providing transportation of individuals, equipment, supplies or wildlife by means of vehicle, vessel or pack animal.²

Additionally, outfitters may provide tents, cabins, camp gear; food or similar supplies; equipment or accommodations and guiding, leading, packing, protecting, supervising, instructing or training persons or groups of persons in the attempted taking of wildlife.³

Colorado boasts a wide variety of wildlife, and as such, there are a variety of types of outfitter-led hunting expeditions available to consumers, including big game hunting and bird hunting.

Big game hunting includes, but is not limited to elk, mule deer, black bear and mountain lion.

Additionally, there are certain outfitters who focus on bird hunting, which includes but is not limited to pheasant, turkey and goose.

Outfitters also offer consumers fishing services. Most commonly, outfitters working in this capacity assist in fly fishing in Colorado's rivers. Outfitters usually provide these services as one-day outings.

Importantly, prior to hunting or fishing with an outfitter, consumers must obtain the appropriate license from the Colorado Department of Natural Resources, Division of Parks and Wildlife.

² § 12-55.5-102, C.R.S.

³ § 12-55.5-102, C.R.S.

Legal Framework

History of Regulation

Outfitters have been regulated in the State of Colorado in various capacities for more than 100 years. In 1903, the Wildlife Commission (Commission) was responsible for the initial regulation of outfitters. The Commission was responsible for ensuring that outfitters were competent and reliable.⁴

Since enactment of regulatory oversight of outfitters in 1903, the industry, and the types of regulation, has evolved. For example, in 1967, the General Assembly enacted various changes to the Outfitters Act including granting the Commission disciplinary authority as well as requiring outfitters to possess a bond, which, among other things, ensures a degree of financial responsibility.

Also, in 1981, the General Assembly repealed the statutory provisions requiring the Division of Wildlife to license outfitters and guides.⁵

In 1983, the General Assembly created a five member Outfitters Board (Board), which was housed in the Department of Regulatory Agencies (DORA), Division of Professions and Occupations (Division). Three of the Board members were outfitters and two Board members were public members.

DORA has been instrumental in the evolution of the regulation of outfitters by completing sunset reviews of the regulation of outfitters in 1987, 1992 and 2002.

One notable recommendation in the 1987 sunset review curtailed the authority of the five-member Board and granted major regulatory authority (disciplinary authority, rulemaking and policymaking) to the Director of the Division (Director). The recommendation, which was passed by the General Assembly, essentially transformed the regulation of outfitters from a “board” to a “director” model program.

The 1992 sunset review recommended that all fines imposed by the court in connection with the regulation of outfitters be equally divided between the Division and any law enforcement agency that assisted the Division in the investigation of the case resulting in a fine.⁶ The General Assembly passed the recommendation in the 1993 legislative session.

The 2002 sunset review recommended that the definition of a “guide” include employees and independent contractors. The General Assembly passed the recommendation in the 2003 legislative session.

⁴ Department of Regulatory Agencies, *2002 Registration of Outfitters Sunset Review*, p.3.

⁵ Department of Regulatory Agencies, *2002 Registration of Outfitters Sunset Review*, p.3.

⁶ Department of Regulatory Agencies, *2002 Registration of Outfitters Sunset Review*, p.4.

Federal Oversight

Federal Permits

The Bureau of Land Management (BLM) and the United States Forest Service (USFS) indirectly provide regulatory oversight of outfitters operating in Colorado through the issuance of land-use permits (also called “special use permits”). Any outfitter operating in Colorado must secure a land-use permit prior to providing services on BLM or USFS land.

A land-use permit is essentially an approval by the BLM or the USFS authorizing an outfitter to conduct business on federal land. Generally, land-use permits are valid for 5 to 10 years.

Colorado Law

State Land-Use Permits

Similar to the federal requirement that outfitters obtain a land-use permit prior to conducting business on BLM or USFS lands, outfitters must secure a land-use permit from the Colorado Division of Parks and Wildlife before conducting business on state lands. These land-use permits are typically valid for five years.

Outfitters and Guides Act

The Outfitters and Guides Act (Act) is created in section 12-55.5-101, *et seq.*, Colorado Revised Statutes. The purpose of the Act is to provide regulatory oversight of outfitters.

Outfitters provide services to consumers, which include accompanying them, and assisting them, on hunting and fishing trips on public or private lands. More specifically, outfitting services are defined as providing transportation of individuals, equipment, supplies or wildlife by means of vehicle, vessel or pack animal.⁷

Additionally, outfitters may provide tents, cabins, camp gear; food or similar supplies; equipment or accommodations and guiding, leading, packing, protecting, supervising, instructing or training persons or groups of persons in the attempted taking of wildlife.⁸

⁷ § 12-55.5-102, C.R.S.

⁸ § 12-55.5-102, C.R.S.

Registration Requirements

An outfitter may be an individual or a business entity.

An applicant for an individual outfitter registration must:⁹

- Be at least 18 years old;
- Hold a valid instructor's card in first aid or a standard first aid card issued by the American Red Cross or hold evidence of equivalent training;
- Possess liability insurance of at least \$50,000 for bodily injury to one person in any single accident and \$100,000 for bodily injury to all persons in any single accident;
- Submit evidence of a surety bond of at least \$10,000;
- Have or will have the required permits or written permission to use the land where the registered outfitter provides outfitting services; and
- Pay the applicable registration fee to the Director.

An applicant for an entity registration must:

- Provide the names of all officers, directors, members, partners, owners of at least 10 percent of the entity, and other persons who have managing or controlling authority;
- Designate one of its officers, directors, members, partners or other controlling or managing individuals to be the responsible party for all communication with the Division; and
- Pay the applicable registration fee to the Director.

Outfitters oftentimes employ guides to assist in providing consumers outfitting services. Guides are not required to become registered, but they must adhere to the following:¹⁰

- Be at least 18 years old; and
- Hold either a valid first aid or first aid instructor's card issued by the American Red Cross or evidence of equivalent training credentials as approved by the Director.

Disciplinary Authority

The Division utilizes a "director" model to provide regulatory oversight of outfitters. Essentially, the Director is responsible for, among other things, imposing discipline on outfitters.

⁹ § 12-55.5-105(1), C.R.S.

¹⁰ § 12-55.5-103.5(1), C.R.S.

The Director is authorized to deny, suspend, revoke or place on probation an outfitter's registration if the applicant or holder does any of the following, including but not limited to:¹¹

- Violates any order of the Director or any provision of the Act or applicable rules;
- Fails to meet the minimum requirements to become registered, including using fraud, misrepresentation or deceit;
- Violates any local, state or federal law related to public land management, wildlife, health or cruelty to animals;
- Is convicted or has entered a plea of *nolo contendere* or guilty to a felony;
- Uses false, deceptive or misleading advertising;
- Misrepresents services, facilities or equipment to clients or prospective clients;
- Is addicted to or dependent upon alcohol or any controlled substance or is a habitual user of a controlled substance; or
- Has incurred disciplinary action related to the practice of outfitting in another jurisdiction.

Additionally, the Director is authorized to impose fines on outfitters. Generally, fines vary between \$100 to \$5,000, depending on the severity of the violation and whether there have been any previous violations of the Act or applicable rules.¹²

The Director is also authorized to issue cease and desist orders if outfitters are acting in a manner that poses an imminent threat to the health and safety of the public, or are operating without the required registration.¹³

Advisory Committee

The Act authorizes the creation of an advisory committee, to make recommendations on issues including discipline, to the Director. The advisory committee consists of five members, appointed by the Director. Three advisory committee members may be registered or retired outfitters and two may be non-registered individuals involved with land or wildlife management or a member of the general public.¹⁴

¹¹ §§ 12-55.5-106(1)(a-h), C.R.S.

¹² §§ 12-55.5-107(1)(a-c), C.R.S.

¹³ § 12-55.5-108(1)(a), C.R.S.

¹⁴ Department of Regulatory Agencies. Office of Outfitters Registration. Chapter 6 Rule 6.1.

Contracts

The Act requires outfitters to provide a written contract to consumers prior to providing services. Contracts must include the following information:¹⁵

- Type of services to be provided;
- Dates of service;
- Transportation arrangements;
- Costs of the services;
- Ratio of clients to guides; and
- The outfitter's policy regarding cancellation of the contract and refund of any deposit.

The Office of Outfitters Registration Rule 7.1 requires outfitters to provide additional information in their written contracts with consumers, including:

- The name of the outfitter, the entity name, business name or trade name;
- The physical location of the business;
- Contact information of the business;
- The outfitter registration number;
- A refund policy which defines what will happen if the prospective client does not draw the required license or tag for the species the client is negotiating to hunt;
- The specific location or locations of the actual hunt using game management units assigned by the Colorado Division of Parks and Wildlife;
- The name of the bond and insurance company; and
- A statement indicating that proof of bond and insurance is available upon request.

¹⁵ §§ 12-55.5-109(1)(a-f), C.R.S.

Program Description and Administration

The Outfitters and Guides Act (Act) is created in section 12-55.5-101, *et seq.*, Colorado Revised Statutes (C.R.S.). The purpose of the Act is to provide regulatory oversight of registered outfitters.

The regulation of outfitters is vested in the Director of the Division of Professions and Occupations (Director and Division, respectively) within the Department of Regulatory Agencies.

The Director is responsible for issuing registrations to outfitters, imposing discipline, rulemaking and policymaking.

Additionally, the Act creates an advisory committee, and the purpose of the committee is to provide information, when requested by the Director, on a variety of issues, including potentially imposing discipline on outfitters. The Act does not mandate the frequency of meetings of the advisory committee, but the committee generally convenes three times per year.

In fiscal year 12-13, the Director devoted 1.0 full-time equivalent (FTE) employees to provide regulatory oversight of outfitters. The FTE are as follows:

- Division Section Director (General Professional VII) - 0.10 FTE;
- Program Director (General Professional VI) - 0.10 FTE;
- Technician V - 0.10 FTE; and
- Administrative Assistant - 0.70 FTE.

The aforementioned FTE do not include the provision of centralized services in the Division, such as investigation, examination services and licensing.

Table 1 highlights the total expenditures for the regulation of outfitters in fiscal years 07-08 through 11-12.

**Table 1
Total Program Expenditures in Fiscal Years 07-08 through 11-12**

Fiscal Year	Total Expenditures
07-08	\$152,999
08-09	\$149,956
09-10	\$146,187
10-11	\$141,885
11-12	\$123,282

As Table 1 illustrates, the total expenditures decreased approximately \$30,000 from fiscal year 07-08 to fiscal year 11-12. Generally, the decrease is attributable to a reduction in expenses such as legal and personal services.

Registration

The Act requires outfitters to obtain a registration from the Director prior to providing outfitting services to consumers. In order to become registered, outfitters are required to complete an application. There are three main components of an application, which requires an applicant to submit verification of liability insurance, a bond and first aid training.

An applicant for an individual outfitter registration must provide verification that he or she possesses minimum liability insurance coverage in the amount of \$50,000 for bodily injury to one person in any single accident and \$100,000 for bodily injury to all persons in any single accident.¹⁶

In order to become registered as an individual outfitter, an applicant must possess a surety bond of at least \$10,000.¹⁷

If an applicant is a corporation or limited liability company, the surety bond and insurance policy must be issued to the business entity.¹⁸ If the applicant is a partnership, the surety bond and insurance policy must name all of the partners.¹⁹

All applicants for registration must also submit verification of first aid training. More specifically, an applicant must possess a valid instructor's card in first aid or standard first aid card issued by the American Red Cross.²⁰

Table 2 highlights the total number of outfitters in fiscal years 07-08 through 11-12.

Table 2
Total Number of Outfitters in Fiscal Years 07-08 through 11-12

Fiscal Year	Newly Registered	Renewal	Reinstatement	Active Registrations
07-08	57	692	25	732
08-09	62	693	35	738
09-10	69	705	32	765
10-11	60	735	38	786
11-12	67	759	14	805

¹⁶ Colorado Division of Professions and Occupations. Office of Licensing – Outfitters. *Application for Original Registration – Outfitter*. p.2.

¹⁷ Colorado Division of Professions and Occupations. Office of Licensing – Outfitters. *Application for Original Registration – Outfitter*. p.2.

¹⁸ Colorado Division of Professions and Occupations. Office of Licensing – Outfitters. *Application for Original Registration – Outfitter*. p.2.

¹⁹ Colorado Division of Professions and Occupations. Office of Licensing – Outfitters. *Application for Original Registration – Outfitter*. p.2.

²⁰ Colorado Division of Professions and Occupations. Office of Licensing – Outfitters. *Application for Original Registration – Outfitter*. p.2.

The total number of outfitters increased from 732 in fiscal year 07-08 to 805 in fiscal year 11-12. Division staff was unable to provide an explanation for the increase in registrants.

The fee to become newly registered as an outfitter (securing a registration for the first time) is \$325.

Outfitters that possess a registration are required to pay an annual renewal fee, which is currently \$185.

Outfitters that are seeking the reinstatement of their registration must pay a reinstatement fee, which is currently \$208.

Complaints/Disciplinary Actions

In fiscal years 07-08 through 11-12, there were a variety of complaints received concerning outfitters. Table 3 provides a total number and the types of complaints received by the Director.

Table 3
Total Number of Complaints Received by the Director in Fiscal Years 07-08 through 11-12

Nature of Complaint	FY 07-08	FY 08-09	FY 09-10	FY 10-11	FY 11-12
Practicing without a Registration	9	7	8	10	5
Contract Violations	11	5	9	4	6
Violation of Another Agency's Laws	2	8	3	10	7
Misrepresentation	1	1	3	1	4
Criminal Violation	0	1	1	2	1
Misconduct	0	2	0	0	1
Safety of Client/Public	2	0	2	2	0
Safety and Sanitation	1	1	0	0	0
Non-Jurisdictional	1	2	3	3	0
Trespass	1	7	1	1	0
Total	28	34	30	33	24

As illustrated in Table 3, the most common complaint related to outfitters in fiscal years 07-08 through 11-12 is "practicing without a registration," which involves allegations that a person or entity is providing outfitting services to consumers without being registered by the Director.

The second most common complaint was for contract violations. Generally, a contract violation occurs when outfitters fail to ensure the contract contains the terms required by Act or rule.

Also, the Director received some complaints in fiscal years 07-08 through 11-12 concerning “violations of another agency’s laws.” Essentially, these complaints focus on outfitters whose conduct involves receiving a citation, violation notice or penalty assessment from a federal or state agency that is responsible for overseeing public land, river management, wildlife or health in the state.

In fiscal year 12-13, one outfitter registration application was denied due to a felony conviction.

Table 4 highlights the total number of disciplinary actions imposed on outfitters.

**Table 4
Total Number of Disciplinary Actions Imposed on Outfitters in Fiscal Years 07-08 through 11-12**

Type of Action	FY 07-08	FY 08-09	FY 09-10	FY 10-11	FY 11-12
Revocations	2	2	2	1	1
Suspensions	0	0	0	0	0
Stipulations	5	8	7	8	5
Letters of Admonition	4	1	2	4	2
Cease and Desist	4	5	6	11	2
Total Disciplinary Actions	15	16	17	24	10
Total Dismissals	19	30	13	11	21

As illustrated in Table 4, there were relatively few disciplinary actions imposed on outfitters, especially in fiscal year 11-12, when there were more than 800 registrants. Also, Table 4 delineates that there were more dismissals (94) during the past five fiscal years than disciplinary actions imposed (82).

Additionally, the Director is authorized to issue fines to outfitters for violations of the Act or applicable rules. Table 5 highlights the total number of fines, including the fines collected, in fiscal years 07-08 through 11-12.

**Table 5
Total Number of Fines Issued and Collected in Fiscal Years 07-08 through 11-12**

Fiscal Year	Number of Fines Collected/Paid	Total Value of Fines Collected/Paid
07-08	2	\$2,000
08-09	3	\$1,500
09-10	3	\$1,250
10-11	2	\$2,000
11-12	2	\$1,500

As Table 5 highlights, there were a total of 12 fines imposed on outfitters in fiscal years 07-08 through 11-12. Ten of the fines were imposed on outfitters that were providing hunting services to consumers in violation of the Act or applicable rules. For example, several fines were imposed on outfitters for failing to provide a written contract prior to providing services. Fines were also imposed on outfitters that failed to possess a valid permit to hunt on Bureau of Land Management or United States Forest Service land. The fines for hunting violations were for either \$500 or \$1,000.

There were two fines imposed on outfitters that were providing fishing services in violation of the Act or applicable rules. One fine was imposed for several violations of the Act and rules, including failing to provide a contract, failing to provide for the safety of clients and personnel, and failing to provide safe, serviceable and sufficient equipment in good working condition. The other fine was for failing to have a valid permit.

Analysis and Recommendations

Recommendation 1 – Continue the Outfitters and Guides Act for 11 years, until 2025.

The first sunset criterion asks whether regulation is necessary to protect the health, safety and welfare of the public. The Director of the Division of Professions and Occupations (Director and Division, respectively) within the Department of Regulatory Agencies (DORA) provides regulatory oversight of registered outfitters.

The Director also utilizes, when appropriate, the Outfitter Advisory Committee, which is comprised of five members. Three advisory committee members may be registered or retired outfitters and two may be non-registered individuals involved with land or wildlife management or a member of the general public.²¹

There are essentially three main components that provide protection to consumers: liability insurance, surety bond requirements and first aid training.

Outfitters must possess minimum liability insurance coverage in the amount of \$50,000 for bodily injury to one person in any single accident and \$100,000 for bodily injury to all persons in any single accident.²²

The liability insurance requirement serves to insulate the consumer from harm in the event that someone or a group of people should be injured during hunting or fishing excursions with outfitters.

Outfitters must also possess a surety bond of at least \$10,000.²³

The surety bond requirement is an important element to ensure protection to consumers who utilize outfitters for hunting or fishing in Colorado. More specifically, the surety bond provides monetary assurance that if a registered outfitter is unable to fulfill its financial obligations, consumers will be protected and able to recoup their money.

Importantly, data were unavailable to determine whether outfitters' surety bonds have been utilized or whether the current amount is appropriate to provide adequate consumer protection. Therefore, this sunset report contains Administrative Recommendation 1, which recommends the Director promulgate a rule requiring outfitters to notify the Director if their bond is utilized.

²¹ Department of Regulatory Agencies. Office of Outfitters Registration. Chapter 6 Rule 6.1.

²² Colorado Division of Professions and Occupations. Office of Licensing – Outfitters. *Application for Original Registration – Outfitter*. p.2.

²³ Colorado Division of Professions and Occupations. Office of Licensing – Outfitters. *Application for Original Registration – Outfitter*. p.2.

Additionally, all outfitters must submit verification of first aid training. More specifically, outfitters must possess a valid instructor's card in first aid or a standard first aid card issued by the American Red Cross.²⁴

The first aid requirement is an important component to ensure that outfitters are trained to address medical issues that may arise during an outfitter excursion.

The aforementioned components serve to provide protection to consumers who utilize outfitters for hunting and fishing excursions from financial and physical harm.

The absence of regulatory oversight increases the potential for harm to consumers (financial and physical), and, thus, regulation is necessary to protect the public.

In order to ensure that consumers who utilize the services of outfitters are protected, the General Assembly should continue the regulation of outfitters in Colorado for 11 years, until 2025.

Recommendation 2 – Amend the Outfitters and Guides Act to allow the Director to impose discipline on a registered outfitter entity, or deny an outfitter registration, for the actions of its officers, directors, members, partners, owners of at least 10 percent of the business or any other persons who may have managing or controlling authority of the business while they are acting on behalf of the registered outfitter.

The primary purpose of the Outfitters and Guides Act (Act) is to provide protection to consumers, and the Director is authorized to impose discipline on registrants for violations of the Act or applicable rules. The Act, however, is silent on whether the Director is authorized to impose discipline or deny a registration based on the actions of an outfitter's officers, directors, members, partners, owners of at least 10 percent of the business or any other persons who may have managing or controlling authority of the business (principals).

As a result, there are at least potential concerns that principals are able to violate the Act and simply move to or create another outfitter business without the Director being able to determine whether the individual should be allowed to operate (in any capacity) an outfitter business.

Additionally, there was one instance in 2011 where a registrant's principals violated the Act, but the Director's authority to discipline the outfitter was questioned by a presiding administrative law judge (ALJ). The question remained unresolved because the ALJ ultimately issued a default judgment.

²⁴ Colorado Division of Professions and Occupations. Office of Licensing – Outfitters. *Application for Original Registration – Outfitter*. p.2.

Consequently, the General Assembly should amend the Act to allow (permissive) the Director to impose discipline on a registered outfitter, regardless of whether the outfitter is an individual or a business entity, for the actions of its principals while they are acting on behalf of the registered outfitter. The Director should also have the authority to review each principal and deny a registration if any of the aforementioned parties has violated the Act in the past.

Implementing this recommendation will serve to heighten consumer protection by allowing the Director to impose discipline on a registration or deny a registration for the actions of an outfitter's principals.

Recommendation 3 – Require outfitters that have their registrations revoked to wait two years before applying for a new registration.

Section 12-55.5-106(1), Colorado Revised Statutes (C.R.S.), authorizes the Director to revoke an outfitter's registration for violations of the Act or applicable rules.

However, the Act does not require that outfitters wait to apply for a new registration. As a result, an outfitter could apply for a new registration the very day that a revocation order becomes effective. This not only poses a risk to the public, but also requires the Division to incur additional expenses in processing the new application and, if it is denied and appealed, additional legal expenses in defending the denial.

Many other practice acts in Colorado provide for a waiting, or "cooling off" period. Although "cooling off" periods range from between one and three years, the most common is the two-year period.

As such, the General Assembly should require outfitters that have their registrations revoked by the Director to wait two years before applying for a new registration.

Recommendation 4 – Authorize the Director to issue confidential letters of concern to outfitters.

Currently, the Act provides a number of options for the Director to utilize when formally disciplining outfitters, including but not limited to revocation, suspension and letters of admonition.

The Director can also choose to dismiss complaints against outfitters for a variety of reasons including but not limited to lack of information. However, the Director does not have the authority to issue a confidential letter of concern (LOC), which is not considered formal discipline, to outfitters. Typically, LOCs are issued to practitioners if there is a basis for concern about improper or questionable conduct, but there is insufficient evidence to substantiate formal discipline.

There have been issues associated with outfitters potentially violating portions of the Act or applicable rules, but the Director does not have enough supporting evidence to initiate formal discipline. As a result, the Director dismissed the complaints.

The ability to issue LOCs is important because unlike dismissals, which are typically purged from a practitioner's file after a certain period of time, LOCs remain on file. Therefore, a regulatory authority is aware of the past performance of a practitioner.

The ability to effectively and accurately track whether outfitters have engaged in questionable conduct via the issuance of LOCs is important to consumer protection. Rather than a dismissal, which is eventually purged from practitioner's files, LOCs remain in their permanent file. This could either deter practitioners from continuing the questionable actions that warranted the issuance of LOCs or it could establish a "track record" for appropriate discipline if there are proven violations in the future.

As such, the General Assembly should amend the Act to authorize the Director to issue LOCs to outfitters.

Recommendation 5 – Amend the grounds for discipline in section 12-55.5-106(1), C.R.S., to include failure to respond to a complaint.

The Act is silent on whether the Director has the authority to formally discipline outfitters for failing to respond to complaints.

When complaints are filed against outfitters, the Director sends a letter outlining the nature of the complaint and requires a response within 30 days of receiving the letter. Although a response is required, there is no formal authority delineated in the Act enabling the Director to formally discipline outfitters for failing to respond to a complaint within 30 days.

A response to a complaint is important because it could provide valuable information to the Director that could assist him/her in determining the merits of a complaint and whether a violation of the Act or applicable rules has occurred.

Failing to respond to a complaint may increase unnecessary expenditures related to an investigation (assumed by the Office of Investigations within the Division) in an attempt to determine whether a violation occurred. For example, the Director could receive a complaint against an outfitter concerning hunting in closed areas. The outfitter could respond to the Director that he or she was out of the country at the time that the alleged incident occurred. As a result, the Director could dismiss the complaint without further investigation.

Conversely, in the hypothetical scenario highlighted above, if the outfitter failed to respond to the complaint, an investigation, presumably, would have ensued only to discover the same information.

In order to create an avenue for the Director to impose discipline on registered outfitters who do not formally respond to complaints filed against them, the General Assembly should include failure to respond to a complaint as grounds for discipline in section 12-55.5-106(1), C.R.S.

Recommendation 6 – Revise language in the Act related to alcohol and drug use.

Currently, section 12-55.5-106(1)(g), C.R.S., authorizes the Director to impose discipline on a registrant who is addicted to or dependent upon alcohol or controlled substances or is a habitual user of a controlled substance.

The language mentioned above is problematic. First, the task of proving that a practitioner is addicted or dependant on alcohol or drugs is difficult. Second, since addiction, regardless of whether it is alcohol or drugs, is considered an illness, disciplining someone for being addicted may have broader legal ramifications.²⁵

A more common standard, and, indeed, more typical of practice acts, would be to use the terms “habitual” or “excessive” use of alcohol or drugs as a basis for discipline.

Consequently, the General Assembly should revise section 12-55.5-106(1)(g), C.R.S., to remove the terms “addicted to” or “dependent upon” and add “excessive” or “habitual” use of alcohol or drugs. Doing so removes the burden of the Director to prove that a practitioner is addicted to or dependent on alcohol or drugs.

Recommendation 7 – Delete the requirement in the Act that the Director send a letter of admonition by certified mail.

Section 12-55.5-106(3)(a), C.R.S., requires the Director to send a letter of admonition (LOA) to a registrant via certified mail.

Certified mail is a service offered by the U.S. Postal Service, and its purpose is to provide a delivery confirmation. For example, when the Director sends an LOA to a registrant via certified mail, the Director receives confirmation that the letter was delivered. Sending an LOA to a registrant is more costly than sending letters via first class or priority mail.

LOAs are the only form of discipline that the Act requires to be sent to registrants via certified mail. This process is inconsistent with other practice acts in Colorado as well as more costly.

²⁵ The U.S. Supreme Court ruled in *Robinson v. California*, 370 U.S. 660 (1962), that addiction is an illness, which may be contracted innocently or involuntarily, and, therefore, the State of California could not punish a person based on such grounds.

Therefore, the General Assembly should remove the requirement in section 12-55.5-106(3)(a), C.R.S., that the Director send an LOA to registrants via certified mail. Doing so would remove an unnecessary requirement that is both more costly for the Division and inconsistent with other practice acts.

Recommendation 8 – Make technical changes to the Act.

Several references in the Act need to be updated and clarified to reflect current practices, conventions and technology. While recommendations of this nature generally do not rise to the level of protecting the health, safety and welfare of the public, unambiguous laws make for more efficient implementation.

Consequently, the General Assembly should make the following technical changes to the Act:

- Update the name of the Division from the “Division of Registrations” to the “Division of Professions and Occupations” throughout the Act.
- Change references to “certificate of registration” to “registration” throughout the Act.
- Remove the term “licensee” and replace it with the word “registrant” throughout the Act.
- Clarify throughout the Act that an outfitter may be an individual or an entity.
- Consolidate the two “Applicability” sections of the Act.
- In section 12-55.5-103.5(1), C.R.S., remove the word “credentials.”
- In section 12-55.5-104(1)(a), C.R.S., add the conjunction “and” between the words “outfitters” and “to.”
- In section 12-55.5-104(1)(b)(I), C.R.S., replace the word “board” with the word “director.”
- In section 12-55.5-104(1)(b)(II), C.R.S., remove the word “touching” and add the words “relevant to” between the words “evidence” and “the.”
- Reword section 12-55.5-105(1)(b), C.R.S., to read “Holds a valid first aid or first aid instructor’s card issued by the American Red Cross.”
- In section 12-55.5-105(1)(d), C.R.S., and throughout Article 55.5 as appropriate, remove the words “and regulations.”
- Remove section 12-55.5-105(1)(e), C.R.S., because it is a duplicate requirement already in the Act.
- In section 12-55.5-106(1)(c), C.R.S., add the words “or regulation” between the words “law” and “related.”
- In section 12-55.5-106(4), C.R.S., remove the words “or renewal.”
- In section 12-55.5-106(2), C.R.S., remove the words “shall pay for the costs incurred in bringing and conducting such proceeding.”
- In section 12-55.5-107(3), C.R.S., add the words “the director or” between “by” and “any.”

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- In section 12-55.5-110(3)(b), C.R.S., remove the words “by the director.” This provision addresses court-ordered selling of seized property. The Director has never utilized this section, but law enforcement agencies may do so.
 - In section 12-55.5-112, C.R.S., replace the words “lodges and lodging” with the word “files.”
 - In section 12-55.5-116.5, C.R.S., update the reference to the Colorado Division of Parks and Wildlife.

Administrative Recommendation 1 – The Director should promulgate a rule that would require outfitters to notify the Director if their bond is utilized.

Currently, the Act requires outfitters to secure a \$10,000 surety bond prior to securing a registration from the Director. However, there is not a requirement in the Act or applicable rules requiring outfitters to inform the Director if their bond is utilized.

Meanwhile, Rule 5.14 in the Outfitters Registration Rules requires outfitters to report to the Director convictions, judgments and administrative proceedings. These reporting requirements are an important mechanism so the Director is aware of any actions, such as felony convictions or judgments, awards or settlements of a civil action or arbitration related to the practice of outfitting, and can impose discipline on outfitters, as appropriate.

Although this sunset review did not identify any issues associated with outfitters utilizing their bond without notifying the Director, as a practical matter, this recommendation serves to strengthen regulatory oversight without imposing an unnecessary burden on outfitters.

The lack of a reporting requirement makes it difficult to determine whether the current \$10,000 bond requirement is adequate or whether the bond is even a necessary requirement.

As such, the Director should promulgate a rule requiring outfitters that utilize their bond to notify the Director within 45 days.