

COLORADO DEPARTMENT OF REGULATORY AGENCIES
OFFICE OF POLICY AND RESEARCH

COLORADO OFFICE OF OUTFITTERS REGISTRATION

2002 SUNSET REVIEW



STATE OF COLORADO

DEPARTMENT OF REGULATORY AGENCIES
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Bill Owens
Governor

October 15, 2002

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 Department of Regulatory Agencies has completed the evaluation of the Office of Outfitters Registration. I am pleased to submit this written report, which will be the basis for my office's oral testimony before the 2003 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 Registrations and its 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,

A handwritten signature in cursive script that reads "M. Michael Cooke".

M. Michael Cooke
Executive Director

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Background

The Sunset Process

The regulatory functions of the Office of Outfitters Registration (OOR), in accordance with Article 55.5 of Title 12 of the Colorado Revised Statutes (C.R.S.), shall terminate on July 1, 2003, unless continued by the General Assembly. During the year prior to this date, it is the duty of the Department of Regulatory Agencies (DORA) to conduct an analysis and evaluation of the OOR pursuant to section 24-34-104(9)(b), C.R.S.

The purpose of this review is to determine whether the OOR should be continued for the protection of the public and to evaluate the performance of the OOR and the staff of the Department of Regulatory Agencies, Division of Registrations. During this review, the OOR must demonstrate that there is still a need for the outfitter registration program and that the regulation is the least restrictive form of regulation that is consistent with the public interest. DORA's findings and recommendations are submitted via this report to the legislative committee of reference of the Colorado General Assembly. Statutory criteria used in sunset reviews may be found in Appendix A on page 45.

Methodology

As part of this review, DORA staff conducted a literature review, attended Outfitter Advisory Committee meetings, interviewed OOR staff, reviewed OOR and Outfitter Advisory Committee records and minutes including complaint and disciplinary actions, interviewed officials with state and national professional associations, interviewed officials with state and federal regulatory and law enforcement agencies, interviewed members of the regulated community and consumers, reviewed Colorado statutes and OOR rules, and reviewed the laws of other states.

Profile of the Profession

An outfitter is an individual or a legal entity that provides hunters and/or fishermen with equipment and supplies, takes them into the wilds and assists them in their endeavors to take wildlife. In addition, outfitters often provide facilities, such as cabins and tents, and meals for their clients. They often employ or contract with guides, who are individuals who lead the clients through the backcountry and instruct them as to the ideal locations for the taking of wildlife.

Registered outfitters offer these services on land that they do not own. They take their clients onto private land that they lease, state lands operated by the Colorado Division of Wildlife (DOW) and/or federal lands operated by the U.S. Forest Service (USFS) or the U.S. Bureau of Land Management (BLM).

History of Regulation

Colorado's bountiful big game herds and award-winning fishing streams have long made it the destination of choice for hunters and fishermen from around the world. Such tourists visit the state in large numbers each year, enjoying Colorado's vast backcountry areas and infusing the state's economy with millions of dollars.

According to the DOW, approximately 1.5 million hunting and fishing licenses were sold in 2001, 131,000 of which were designated as "non-resident," meaning they were sold to people who are not Colorado residents. The 1.5 million licenses sold generated approximately \$60 million in revenue for the DOW. Approximately \$40.5 million, fully two-thirds, of this sum was generated from non-resident licenses.

If only one-quarter of those 131,000 non-resident licensees booked a modest \$1,200 hunting or fishing expedition from a Colorado outfitter, an additional \$39.2 million was pumped into Colorado's economy in 2001. Importantly, this figure does not include additional purchases made by hunters and fishermen, such as food, lodging, meatpacking, souvenirs, and transportation expenses.

Therefore, taking a conservative approach, the sports of hunting and fishing generated approximately \$100 million for Colorado in 2001, and hunting and fishing outfitters generated almost half of that amount.

Environmental tourism plays a vital role in Colorado's economy, so it is no surprise that the state has long taken a regulatory interest in protecting and promoting this profitable natural resource.

Direct state regulation of hunting and fishing outfitters first began in Colorado in 1903. The Colorado Wildlife Commission's initial task was to ensure that hunting and fishing guides were competent and reliable.

The regulatory scheme remained loose and relatively unstructured until 1967, when the General Assembly strengthened the Wildlife Commission's statutory authority. Bonding requirements were introduced, thus ensuring a degree of financial responsibility. In addition, the General Assembly authorized the Wildlife Commission to issue licenses to guides and outfitters, and to administer examinations to these individuals, thus ensuring a minimal level of competency. Finally, the Wildlife Commission was empowered to impose penalties for statutory and regulatory violations, including the imposition of fines.

Approximately 14 years later, in 1981, the General Assembly repealed the statutory provisions requiring the Division of Wildlife to license guides and outfitters. Similarly, the Division of Wildlife's authority to impose penalties and fines was also repealed. It is not, however, accurate to portray these repeals as complete deregulation of the industry. As this report will demonstrate, outfitters are, and were in 1981, still subject to numerous other state and federal regulatory provisions.

In 1983, the General Assembly reinstated the regulation of hunting and fishing outfitters and established the Outfitters Licensing Board (Board) in the Department of Regulatory Agencies, Division of Registrations (Division). The new policy-autonomous Board was composed of five governor-appointed: three outfitters and two public members.

In 1985, the Board began administering examinations for licensure. In addition, the General Assembly passed legislation requiring outfitters to possess minimum levels of liability insurance and, for the first time, required them to demonstrate competency in first aid.

However, the 1987 sunset review of the Board resulted in a severe curtailment of its authority. The resulting legislation, which took effect in 1988, reduced the Board to its current status as an advisory committee. As a result, full regulatory authority, including, but not limited to, the authority to establish policy, make rules and take disciplinary action, was vested in the Director of the Division (Director). The Office of Outfitters Registration (OOR) was created as the body through which the Director could regulate the industry. In addition, all licensing requirements were repealed. In their place, a system of registration was instituted whereby only registered outfitters could legally provide outfitting services. To obtain a registration, an outfitter need only obtain and maintain a surety bond, liability insurance and a first aid card.

In 1992, another sunset review was conducted. Although very few substantive changes were made to the outfitter's regulatory program, at least one is worth mentioning. Legislation was passed, and it is still in effect, requiring all fines imposed by a court in connection with the regulation of outfitters to be equally divided between the OOR and any law enforcement agency that assisted the OOR in the investigation of the case resulting in the fine.

As this brief history demonstrates, the State of Colorado has regulated outfitters in one form or another for nearly 100 years. However, over the years, the state has gone from minimal regulation to full regulation and back to minimal regulation. As this report will delineate, there is little need to disrupt the current, less restrictive, regulatory environment.

Legal Framework

Both the U.S. Forest Service (USFS) and the U.S. Bureau of Land Management (BLM), indirectly regulate hunting and fishing outfitters. Both federal agencies issue land-use permits to companies or individuals that engage in commercial activities on their respective landholdings. As a precondition to issuing such a permit in Colorado, a hunting and/or fishing outfitter must possess, among other things, a registration issued by the Colorado Office of Outfitters Registration (OOR).

In addition to an OOR-issued registration, such outfitters must submit to the BLM or USFS, depending on which agency's land the outfitter seeks to operate, a business plan, which delineates the activities to be conducted on the land, the number of people to be taken onto the land and the number of days such people will be on the land. The federal agencies also retain the right to inspect any camps or other facilities utilized by the permit holder, as well as any equipment. In addition, permit holders must submit periodic reports to these federal agencies, outlining the activities actually conducted and the outfitter's actual earnings. Three percent of these earnings must be paid to the USFS or BLM, as the case may be.

Importantly, the USFS has determined the capacity of its holdings, and, in most forests, will not issue any new permits, which are valid for between five and 10 years, unless old permits are surrendered, revoked or otherwise lapse.

The BLM does not have a moratorium on new permits, which are valid for five years. However, every two to three years, it conducts financial audits of between 10 and 12 permit holders to ensure that the BLM is receiving all the funds due it under the relevant permit.

Under Colorado law, only a registered outfitter may engage in activities as an outfitter. §12-55.5-103(1), Colorado Revised Statutes (C.R.S.). An outfitter is any person who solicits to provide or provides outfitting services for compensation for the purpose of hunting or fishing on land the person does not own. §12-55.5-102(5), C.R.S. A person who provides outfitting services only on land owned by that person is, therefore, not an outfitter within the meaning of the statute and is exempt from all registration requirements. Additionally, a person who only provides motor vehicles, horses or other equipment for rent is not an outfitter within the meaning of the statute. §12-55.5-102(5), C.R.S.

Outfitting services are defined as providing: transportation of individuals, equipment, supplies or wildlife by means of vehicle, vessel, or pack animal; facilities, including but not limited to tents, cabins and 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 take or attempted take of wildlife. §12-55.5-102(5.5), C.R.S. While providing such services, the outfitter must provide for the safety of all clients and personnel, and all equipment must be safe. OOR Rule D.

To provide these services, an outfitter typically employs, or contracts with, guides, who are individuals “employed for compensation by an outfitter for the purpose of guiding, leading or assisting any other person to and from a given place.” §12-55.5-102(4), C.R.S.

Outfitters are regulated by the OOR, which is administratively housed in the Department of Regulatory Agencies, Division of Registrations (Division). The Director of the Division (Director) is statutorily directed to appoint an outfitter advisory committee (Advisory Committee), which serves at the request and pleasure of the Director. §12-55.5-111, C.R.S. The Advisory Committee consists of five members, four of whom must be registered outfitters at the time of their appointment with a minimum of five years experience as a practicing outfitter. The remaining member must be a non-registered individual involved in land or wildlife management or a member of the general public. OOR Rule G(1) and (2). Advisory Committee members may serve no more than two, four-year terms. OOR Rule G(3). Annually, the Advisory Committee elects from its number a Chairperson and Vice-Chairperson. OOR Rule G(6). Advisory Committee members do not receive compensation for serving as such, but are reimbursed for any necessary and actual expenses. §12-55.5-111, C.R.S.

Although the Advisory Committee has no statutory authority and has no statutory mandates, past and current Directors have allowed it to take a relatively active role in disciplinary, policy-making and rule-making matters. OOR Rule G(5). The Director typically attends all Advisory Committee meetings, which occur on a quarterly basis.

It is important to note, however, that all rule-making and disciplinary powers are vested in the Director. §12-55.5-104, C.R.S. In addition, the Director may issue declaratory orders to terminate controversies or to remove uncertainties as to the applicability of any statutory provision or rule. OOR Rule F(1). According to OOR Rule F(3), the Director must weigh the following issues in deciding whether to issue a declaratory order:

- Whether a ruling will terminate the controversy or remove uncertainties.
- Whether the petition for a declaratory order involves any subject, question or issue which is the subject of a formal or informal matter or investigation currently pending.
- Whether the petition seeks a ruling on a moot or hypothetical question or will result in an advisory ruling or opinion.
- Whether the petitioner has any other adequate legal remedy available.

Before the OOR issues a certificate of registration to an applicant, the applicant must demonstrate that he/she is at least 18 years of age; holds a valid instructor's card or a standard first aid card issued by the American Red Cross or evidence of equivalent training; possesses liability insurance coverage of at least \$50,000 for bodily injury to a single person in any single accident, and \$100,000 for bodily injury to all persons in any single accident; submits a surety bond to the Director in an amount of at least \$10,000; and pays any applicable registration fees. § 12-55.5-105(1), C.R.S. Furthermore, an outfitter must maintain a regular place of business and must notify the OOR of its mailing address and telephone number upon registration. OOR Rule B(7). Registrations are not transferable. OOR Rule B(3).

Individuals, partnerships and corporations may register as outfitters. Individuals must register with the OOR in their own name. However, partnerships, corporations and unincorporated associations must designate one member or officer to apply for registration. This individual must comply with all registration requirements, except that he/she is not required to obtain a first aid card. §12-55.5-105(4), C.R.S. Any outfitter conducting business under an alias must provide the OOR with all such aliases. OOR Rule B(1) and (2).

An outfitter is required to carry proof of registration at all times while conducting outfitting services. OOR Rule B(6).

Registration fees are established by the Director and are based upon the OOR's annual budgetary needs. §12-55.5-103(2), C.R.S.

Registered outfitters are required to retain all applicable documents, records and other items for the current year and preceding four years. The Director or any peace officer may inspect these records at any time. Failure to allow such an inspection is a misdemeanor, punishable by a fine of \$100. §12-55.5-107(3), C.R.S. Required records include: names and addresses of clients; dates the services were provided; names and addresses of employees and contracted personnel, and copies of their first aid cards; documentation that clients, employees and contracted personnel were informed of all applicable laws and requirements; documentation of insurance coverage and bond; and contracts or agreements entered into with any booking agent and with each client. OOR Rule D(14).

Registered outfitters are also required to utilize written contracts with their clients before engaging in outfitting activities. These contracts must delineate the type(s) of service(s) to be provided and when and where such services are to be provided, transportation arrangements, costs of the services, ratio of clients to guides and the outfitter's policy regarding cancellation of the contract and any applicable refund policy. §12-55.5-109(1), C.R.S. In addition, the contract must state that the outfitter is insured and bonded, and that outfitters are regulated by the Director. §12-55.5-109(3), C.R.S. Such contracts must be delivered to the client within 30 days of the outfitter's receipt of a deposit. OOR Rule D(8). If an outfitter fails to utilize such a written contract, the outfitter is barred from bringing an action for breach of contract under any such agreement. §12-55.5-109(2), C.R.S.

All equipment, services and facilities provided by an outfitter to a client must be safe, serviceable and sufficient for the intended purposes. In addition, while conducting outfitting activities, an outfitter is required to carry first aid supplies sufficient to administer aid immediately, and each camp must be stocked with more comprehensive first aid supplies. OOR Rule D(1) - (7).

Any person who engages in the practice of outfitting and who fails to register with the OOR is guilty of a misdemeanor, which is punishable by a fine of between \$1,000 and \$5,000, and/or up to one year in jail. Any subsequent offense is a Class 5 felony, which is punishable by a fine of between \$1,000 and \$100,000, and/or one to three years in jail. §§12-55.5-107.5(1), 18-1-105, C.R.S. Half of all such fines collected are distributed to any federal, state or local law enforcement agency assisting with the investigation, and the other half is distributed to the Division for the administration of the OOR. §12-55.5-107.5(2), C.R.S.

In addition, any contract or agreement for outfitting services entered into by an outfitter who is not registered is void and unenforceable. §12-55.5-110(1), C.R.S. Every motor vehicle, trailer, vessel, firearm, weapon, trap, piece of equipment, livestock or other personal property of such an outfitter is a Class 2 public nuisance and may be seized. §12-55.5-110(2), C.R.S.

Pursuant to section 12-55.5-106(1), C.R.S., the Director may deny, suspend, revoke or place on probation an outfitter's registration if the applicant or registrant:

- Violates any order of the Division or Director or violates any provision of Article 55.5 of Title 12, C.R.S., or the rules and regulations promulgated thereunder.
- Violates any local, state or federal law related to public land management, wildlife, health or cruelty to animals.
- Is convicted of or has entered a plea of *nolo contendere* or guilty to any felony, or second or third degree criminal trespass.
- Uses fraud, deceit or misrepresentations in applying for registration, in any advertising or in any solicitations.
- Is addicted to or dependent upon alcohol or any controlled substance within the meaning of Part 3 of Article 22 of Title 12, C.R.S., or is a habitual user of such a controlled substance if the use, addiction or dependency is a danger to clients or prospective clients.
- Serves or consumes alcohol while providing outfitting services if under 21 years of age.
- Has incurred disciplinary action related to the practice of outfitting in another jurisdiction.
- Hires any person as a guide who fails to meet the requirements for guides.

Any disciplinary action must be taken pursuant to the State Administrative Procedure Act. §12-55.5-106(2), C.R.S. The Colorado Court of Appeals has initial jurisdiction to review all final agency actions and orders. §12-55.5-115, C.R.S.

Finally, any person found to have violated Article 55.5 of Title 12, C.R.S., may be fined in an administrative proceeding: \$300-\$500 for the first such violation; and between \$1,000 and \$2,000 for any subsequent violation. §12-55.5-107(1), C.R.S. Furthermore, violators shall pay the costs incurred for bringing and conducting such an administrative proceeding. §12-55.5-107(1.5), C.R.S.

Program Description and Administration

The five-member Outfitter Advisory Committee (Advisory Committee) meets on a quarterly basis. It is currently comprised of four registered outfitters and a representative from the Colorado Division of Wildlife (DOW). Meetings typically last a full day, and it is not unusual for one to five members of the public to attend. Members of the public who attend are often registered outfitters or representatives from the U.S. Forest Service (USFS) or the U.S. Bureau of Land Management (BLM).

Meetings are held, for the most part, outside of the Denver metro area so that members of the Advisory Committee and other registrants may attend and participate more easily.

While the Director of the Division of Registrations (Director) has the ultimate authority on registration and disciplinary matters, in practice, the Director typically follows the recommendations of the Advisory Committee.

License/Registration

The Office of Outfitters Registration (OOR) is a cash-funded agency. It generates revenue by collecting initial and renewal registration fees and by imposing fines. The initial registration fee for fiscal years 96-97 through 98-99 was \$350. This increased to \$375 for fiscal years 99-00 through 00-01. Renewal fees were \$150 in fiscal years 96-97 and 97-98, \$160 in fiscal year 98-99, \$185 in fiscal year 99-00 and \$195 in fiscal year 00-01.

In addition to these fees, the OOR is authorized to impose fines for violations of the outfitter practice act. Such fines range from \$300 to \$500 for the first violation and \$1,000 to \$2,000 for subsequent violations. If the OOR investigates the case on its own, without the assistance of any other agency, the OOR retains the funds generated by such fine. However, if an agency other than the OOR investigates the case, such as the DOW, the USFS or the BLM, and there is a criminal conviction in which a fine is part of the sentence, half of the funds generated by such a fine are given to that agency to help offset the cost of the investigation and half are retained by the OOR.

Table 1 illustrates the OOR's expenditures for the last five fiscal years, as well as the number of full-time equivalent (FTE) employees assigned to the OOR.

**Table 1
Program Expenditures**

Fiscal Year	Total Program Expenditure	FTE
96-97	\$159,257	1.5
97-98	\$164,925	1.5
98-99	\$248,179	1.5
99-00	\$193,771	1.5
00-01	\$219,132	1.5

The OOR's staff comprises 0.5 FTE Program Administrator and 1.0 FTE Program Assistant. In addition, the OOR retains the services of a contract investigator, who is a DOW-designated Special Wildlife Officer and as such, is a certified Level II Peace Officer. In fiscal year 00-01, the contract for this investigator totaled \$25,000.

These funds and FTE regulate approximately 750 registered outfitters. Table 2 reflects that the number of registered outfitters has remained relatively constant during the five years reviewed.

**Table 2
Registration Information**

Number of Registrations				
Fiscal Year	New	Endorsement	Renewal	TOTAL
96-97	123	N/A	619	725
97-98	139	N/A	673	750
98-99	134	N/A	688	756
99-00	79	N/A	719	766
00-01	67	N/A	686	756

The OOR typically issues a registration within five days of receiving a complete application. Registrations expire on December 31 of each year.

Examination

The OOR does not administer or require any examinations for registration as an outfitter.

Complaints/Disciplinary Actions

As Table 3 reflects, the OOR receives approximately 100 complaints each year. None of the complaints received in the last five fiscal years have involved physical injuries to people.

**Table 3
Complaint Information**

Nature of Complaints	FY 96-97	FY 97-98	FY 98-99	FY 99-00	FY 00-01
Unregistered Activity	54	2	9	14	19
Standard of Practice	7	7	0	0	5
Contract Issues	12	6	2	6	10
Misrepresentation	21	31	66	21	21
Record Keeping	0	0	0	1	0
Falsification of Documents	3	4	4	0	1
Violation of State/Federal Game Laws/Rules	24	17	19	26	16
Advertising	43	19	4	5	2
Cancellation of Bond or Insurance	2	0	0	0	0
Multiple Allegations	4	0	1	0	0
Miscellaneous	5	2	2	2	6
Total	175	89	107	75	80

Complaints concerning standards of practice can involve the safety of clients (hunters and/or fishermen), the quality of the outfitter's stock (horses, mules, pack animals, etc.) and equipment, and whether the outfitter provides an orientation to the client. The OOR has received only 19 complaints involving standard of practice during the five-fiscal year period under review. This is remarkable, considering there are over 700 registered outfitters.

Importantly, the two issues that generate the highest number of complaints involve violations by outfitters of state and/or federal game laws, and misrepresentations. Violations of game laws typically involve the illegal taking of animals. For example, an animal is illegally taken when an outfitter takes a client onto lands for which the outfitter lacks a land-use permit, or an outfitter assists a client (either intentionally or unintentionally) in taking an animal for which the client lacks the appropriate license.

Misrepresentations typically involve issues such as alleged oral promises made by the outfitter to the consumer regarding the area in which the outfitter will take the client to hunt, guarantees regarding the harvesting of an animal, and the quality of the outfitter's stock, equipment and food.

Complaints regarding contract issues, which are typically initiated by the OOR itself, revolve around outfitter contracts that lack statute or rule-mandated language, such as the outfitter's refund policy, the exact dates of the booking and the name and address of the OOR.

The number of complaints regarding unregistered activity has dropped considerably during the five-year review period. A review of OOR complaint files revealed that approximately half of these complaints were filed by registered outfitters against their unregistered competitors. Less than half of these complaints were referred to the OOR from other agencies, such as the USFS, the BLM or the DOW. In many of these cases, the referring agency also took action against those involved based on its own statutory authority (e.g., engaging in an illegal commercial activity).

The remaining complaints involving unregistered activity came from consumers. No complaint that was reviewed as part of this sunset review involved allegations of physical harm or safety. Economic harm most often resulted from an outfitter's refusal to return a deposit or refusal to discount a hunt because it was not what the hunter had expected in terms of quality of equipment, shooting opportunities or hunting areas. These topics also generate complaints against registered outfitters.

Additionally, complaints regarding advertising have also declined dramatically. Prior to 1999, an OOR rule required outfitters to include registration numbers in all advertising. However, this rule was repealed and, as a result, there are fewer advertising issues.

Complaints to the OOR must be in writing, though they may be anonymous. OOR staff reviews all complaints when they are initially filed. If necessary, OOR staff will request additional information from the complainant, when possible.

If the complaint does not allege unregistered activity and if proven true, would constitute a violation of the outfitter practice act, OOR staff sends the complaint to the outfitter along with a letter of inquiry, which asks for a written response within 20 days.

OOR staff then reviews the complaint and the outfitter's response to determine whether any additional information is necessary. If additional information is necessary, OOR staff attempts to obtain it. If additional information is not necessary, copies of the case file are mailed to the members of the Advisory Committee, who are asked to recommend what action, if any, should be taken. The Advisory Committee members respond to this initial request in writing, via mail or fax. If there is a general consensus among Advisory Committee members as to the type of action to take, OOR staff may prepare the necessary documentation and forward the case file to the Director.

However, if there is no consensus among the Advisory Committee's recommendations, or it appears that a discussion is necessary, the case is held over until the next regularly scheduled Advisory Committee meeting, where the case is discussed.

Occasionally, the Advisory Committee will request additional information, but in most cases there is sufficient information upon which the Advisory Committee can base a recommendation. The recommendation is then forwarded to the Director, who makes the decision regarding final agency action. This entire process takes an average of 47 days.

If the final agency action entails a letter of admonition, OOR staff drafts and mails the letter. However, if it entails any other type of disciplinary action, the case is referred to the Attorney General's Office (AGO).

The Assistant Attorney General assigned to the OOR will attempt to settle the case within guidelines provided by the Director, often upon the recommendations of the Advisory Committee. If settlement is not attained, a Notice of Charges is filed and a hearing is scheduled before an administrative law judge.

Either the AGO or the outfitter may appeal the administrative law judge's decision to the Director by filing exceptions. An appeal of this final agency action may be made directly to the Colorado Court of Appeals.

In those instances in which the OOR becomes aware of an alleged-unregistered outfitter due to the discovery of an alleged-unregistered outfitter's advertising, the complaints are processed, for the most part, according to the procedures discussed above. In addition, however, OOR staff will mail along with the initial letter of inquiry, an application for registration to more easily facilitate that alleged-outfitter's compliance with the registration requirements.

Many times these cases arise because new outfitters were not aware of any registration requirements or simply misunderstood them. In such cases, the OOR and Advisory Committee may impose suspended disciplinary action if the outfitter registers subsequent to the filing of the complaint. For example, if the OOR receives a complaint regarding an unregistered outfitter and that outfitter subsequently applies for registration, a fine may be held in abeyance for a period of time to ensure that the outfitter continues to comply with applicable legal requirements. In this manner, the outfitter joins the regulated community under minimal penalty for doing so.

If the alleged-outfitter does not apply for registration and the OOR determines that the alleged-outfitter was providing outfitting services, the OOR will issue a cease and desist order. Continued violations may result in additional action, as described below. If it is determined that the alleged-outfitter was not offering outfitting services, the complaint is dismissed.

Other complaints alleging unregistered activity are either assigned directly to the OOR's contract investigator, or OOR staff contacts the DOW, BLM or USFS as appropriate. The staffs of these agencies then determine who, if any, will proceed with the investigation.

Investigations into allegations of unregistered activity where the alleged-outfitter did not register, ignored a cease and desist order, or where the allegations are more substantial, are often time-consuming because hunting and fishing seasons are limited in duration. Complaints of unregistered activity are typically received in the middle of, or towards the end of the season. This often necessitates postponing an investigation until the following season. In addition, such cases almost always involve undercover work because it is usually necessary to actually go hunting or fishing with the outfitter in order to establish that the outfitter is providing services that constitute outfitting services. As a result, it often takes up to two years before an investigation is completed.

The typical undercover case takes approximately 120 to 130 hours of work: 15-20 hours of advance work to contact the outfitter and book the trip, 60 hours of hunting/fishing, 20 to 30 hours to write the investigative report and an untold number of hours spent in court.

The OOR allows its contract investigator a great deal of latitude. In addition to working with the OOR, the investigator also works closely with the appropriate district attorney so that criminal charges may be brought at the appropriate time.

Once an undercover investigation is concluded, the case is forwarded to the Advisory Committee just like any other case. In all cases, the complainant is notified of the final disposition of the case.

The OOR works closely with the DOW, BLM and USFS on all complaints that have common ground with those agencies. Any fines that are imposed are shared between the OOR and the agency with which it worked on a given investigation. Furthermore, certain cases in which the DOW, BLM or USFS issue citations may be referred to the OOR.

Table 4 illustrates the varieties and number of disciplinary actions taken over the last five fiscal years.

**Table 4
Disciplinary Information**

Type of Action	FY 96-97	FY 97-98	FY 98-99	FY 99-00	FY 00-01
Revocations	1	1	2	0	0
Suspensions	10	19	9	3	4
Probation	15	24	15	17	12
Letters of Admonition	30	44	22	18	12
Filed for Accumulative Effect	8	17	12	10	9
Registrations Denied	2	0	2	0	1
Other	25	29	29	21	21
Cease and Desist Orders	6	3	9	3	4
Dismissals	68	30	33	25	30
TOTAL	165	167	133	97	93

While the number of revocations has remained low and constant over the course of the review period, the number of suspensions has declined from a high of 19 in fiscal year 97-98, to a low of three in fiscal year 99-00. Suspensions are typically for one year, and in many cases can lead to an outfitter going out of business. This has an effect similar to a revocation. The combined total of revocations and suspensions indicates that only very rarely does the OOR take the extreme measure of revoking or suspending a registration. An outfitter that is found to have violated the law is more likely to receive a letter of admonition than any other type of discipline.

However, the OOR also tends to impose a large number of fines, often in conjunction with letters of admonition. The “Other” heading in Table 4 reflects a combination of fines and suspensions that are held in abeyance. Each form of discipline accounts for approximately half of the total “Other” numbers.

Table 5
Fining Information

Fiscal Year	Total of Fines Ordered	Total of Fines Held in Abeyance	Total of Fines Collected
96-97	\$17,250	\$3,700	\$13,550
97-98	\$19,550	\$7,800	\$11,750
98-99	\$22,500	\$10,300	\$12,200
99-00	\$22,200	\$8,150	\$14,050
00-01	\$26,250	\$9,200	\$17,050

Assuming one half of the “Other” figures in Table 4 were fines, and comparing such information to that contained in Table 5, the average amount of a fine imposed by the OOR ranges from a low of approximately \$1,300 in fiscal year 96-97, to a high of \$2,600 in fiscal year 00-01.

Although the OOR orders a significant number of fines, it also holds a considerable portion of them in abeyance. This practice helps to ensure continued compliance because when a fine is held in abeyance, it is not payable until the registrant violates the terms of the stipulation that gave rise to the fine. Typically, disciplinary actions are worded so that a portion of the fine is payable immediately, with the remaining portion held in abeyance.

Similarly, a suspension can be held in abeyance for a period of time so as to compel compliance without actually infringing upon the outfitter’s ability to operate and earn a living.

Finally, the OOR also files complaints for accumulative effect. The complaint is placed in the outfitter’s file, but no additional action is taken unless a subsequent complaint is filed within three years. This is typically done when the complaint alleges something that constitutes a minor violation or in cases in which it will be particularly difficult to prove any violations and the alleged violations themselves are relatively minor. By filing the complaint for accumulative effect, the OOR can track whether that outfitter receives any similar complaints in the future, and if a pattern develops, the OOR can take appropriate action.

The OOR has a wide range of disciplinary options available to it. The figures in Table 4 suggest that the OOR tends to favor less onerous types of discipline, reserving revocations and suspensions for truly serious violations. This trend is in line with the fact that most files reviewed by DORA in connection with this sunset review concerned minor or economic harm, not physical harm to a consumer.

In addition, in 2002, the OOR began requesting certain records of randomly selected registered outfitters to ensure compliance with the bonding and insurance requirements imposed by statute. The OOR sent requests to five percent of registered outfitters (roughly 40 outfitters) requesting proof of surety bond and proof of liability insurance. Only one of the audited outfitters failed to provide the requested information.

Since the OOR already had charges pending against that outfitter, the Advisory Committee recommended that the AGO consolidate the cases, and it revised the recommended sanctions to include an additional fine of \$500 and an additional one-year suspension held in abeyance. Additionally, the Advisory Committee directed the OOR staff to determine whether the outfitter's renewal application misrepresented that the outfitter had a bond and insurance. If so, the Advisory Committee recommended an additional fine of \$500.

This has the potential to be a serious issue because it goes to the very heart of the minimal public protection mechanisms in the current regulatory scheme. It is not difficult to register with the OOR. An outfitter simply needs to provide proof of insurance, bond and first aid training. To renew their registrations, outfitters need to sign a statement attesting that they have a bond and insurance.

When an outfitter attests that he/she has a bond and insurance, but does not, not only does that outfitter fraudulently obtain a registration, but he/she also places the public at risk by not maintaining the minimal public protection safeguards that are required.

Analysis and Recommendations

Recommendation 1 – Continue the Colorado Office of Outfitters Registration until 2014.

The guiding question in any sunset review is whether the regulation under review protects the health, safety and welfare of the public, and if it does, whether it is the least restrictive form of regulation that is consistent with the public interest. The easiest and most objective way to quantify this is to examine what, if any, harm to the public has occurred.

The statutes and rules that currently regulate outfitting in Colorado do not ensure, and do not attempt to ensure, a minimal level of competency for outfitters. Rather, current regulation merely ensures that registered outfitters are financially responsible by requiring a surety bond and minimal liability insurance. In addition, registered outfitters must obtain and remain current in first aid training, thus providing a minimal level of public safety.

There are only two objective measures that can be applied to the regulation of outfitters to determine whether such regulation protects the public: instances of physical harm and instances of economic harm.

During the last five fiscal years, the Office of Outfitters Registration (OOR) has not received a single complaint that alleged physical harm to a consumer. This is true for complaints involving both registered and unregistered outfitters.

In analyzing this issue, it is also necessary to address the issue of unregistered activity, for if there is a high level of unregistered activity and a low number of instances of physical harm, the argument in favor of regulation based on physical safety fails.

The degree to which unregistered activity is occurring is a highly contentious issue in and of itself. Outfitters and representatives from the Colorado Division of Wildlife (DOW), the U.S. Bureau of Land Management (BLM) and the U.S. Forest Services (USFS) estimate that for every registered outfitter, there are between three and seven unregistered outfitters. Based on these estimates, there are between 2,250 and 5,250 unregistered outfitters operating in Colorado, compared to 750 registered outfitters.

Most parties who assert these estimates admit, however, that a majority of these unregistered outfitters conduct relatively small operations. That is, an unregistered outfitter is typically someone who will take out a hunter or fisherman for a day or two for only a few hundred dollars. This outfitter has very little, if any, equipment or stock. This outfitter is typically someone who lives in the area, knows it well, and is simply looking for a way to supplement his/her regular income.

At the other end of the spectrum, it is argued, are larger operations. These outfitters advertise and actively solicit business, possess equipment and stock, and employ guides. Allegedly, these outfitters have determined that the profitability of operating illegally outweighs the risk of being caught. The profitability of these operations is based not so much on avoiding the registration fees assessed by the OOR, as it is on tax avoidance and using public lands without the necessary permits and not paying the fees associated therewith.

However, the individuals and organizations that assert these estimates have nothing to support them other than unverifiable anecdotal evidence. The only organization that has quantifiable evidence regarding unregistered activity on a statewide basis is the OOR.

As part of this sunset review, DORA reviewed 42 case files that involved allegations of unregistered activity. Of these, 32 alleged no harm, eight involved economic harm and two involved harm to wildlife. Those complaints that alleged no harm were typically filed by registered outfitters. Indeed, 14 of these complaints were filed by registered outfitters, nine by consumers and eight by other government entities, such as the DOW, BLM or USFS.

Of the 19 complaints of unregistered activity filed in fiscal year 00-01, the OOR issued cease and desist orders in four of them. The remaining cases were referred to the DOW, USFS or the BLM for criminal prosecution.

Importantly, the DOW prosecutes between five and 10 cases each year that involve unregistered outfitting. The USFS and BLM do not track such information on a centralized, statewide basis. Rather, each land-unit keeps its own records.

If there were only 19 instances of unregistered activity in fiscal year 00-01, then it appears as though the OOR is doing an acceptable job of keeping unregistered activity to a minimum. This is especially true considering the millions upon millions of acres of forests and unpopulated areas in Colorado that are open to hunting and fishing, and that elk and deer are in season only five weeks out of the year. Thus, there is no quantifiable, verifiable proof that unregistered activity is as prevalent as some would argue.

Additionally, if there were such proof, there is no quantifiable, verifiable evidence that it is harming the public. If there are between 2,250 and 5,250 unregistered outfitters operating in Colorado, it is remarkable that fewer than 19 of them were reported in fiscal year 00-01 and that there were no reported instances of physical harm.

In fact, the complaints that the OOR did receive in fiscal year 00-01 from consumers regarding unregistered activity centered primarily around economic harm: the outfitter either refused to return a deposit to a hunter or the outfitter supplied services and/or equipment that was of a quality less than what was originally promised.

Thus, in terms of harm to the consumer, and utilizing only that data which is verifiable (the number and nature of complaints handled by the OOR), DORA concludes that unregistered activity is not as prevalent as some would estimate and that, therefore, the OOR and its current regulatory scheme are doing an adequate job of protecting the public from physical and economic harm.

There are, however, other types of harm to consider. Hunting and fishing by non-residents accounted for approximately \$40 million in license fees in 2001. If only one quarter of the people to whom non-resident hunting and fishing licenses were issued spent \$1,200 on a modest hunting or fishing expedition, an additional \$40 million was added to Colorado's tourist economy in 2001.

During the course of this sunset review, DORA was contacted by various hunters from out of state who have engaged the services of Colorado's registered outfitters. Each of them strongly advocated for the continuation of regulation, even though they were unaware that Colorado's current regulatory scheme does not ensure a minimal level of competency. They took comfort from knowing that Colorado outfitters were at least required to post a surety bond and maintain liability insurance.

Creating a minimal comfort level for consumers should not be underrated. At least one hunter with whom DORA spoke indicated that he had been reluctant to come to Colorado to hunt because he knew people who had had bad experiences with outfitters here. It became clear during this conversation that when tourists discuss vacation/hunting destinations, they speak in general terms. For example, if a hunter has a bad experience with an outfitter in Colorado, that hunter may warn his/her friends against hunting in Colorado, rather than warn them against a particular outfitter.

While it is not possible to extrapolate the degree to which the number of out of state hunters and fishermen coming to Colorado would change if regulation of outfitters were repealed, it is reasonable to assume that a larger number of outfitters would operate on a cash-only basis and fail to report such income to the Colorado Department of Revenue so as to avoid paying taxes on it. Thus, it is reasonable to conclude that the state's tax base may shrink to some degree.

This uncertainty is compounded by the fact that Colorado received a great deal of national press during the summer of 2002 because of wildfires and chronic wasting disease. These issues, too, could cause a decline in the number of hunters and fishermen who visit Colorado in the future.

Additionally, it is likely that many outfitters would cancel their surety bonds and insurance policies, thus placing the public at risk in the event financial resources are required.

Yet another type of harm to consider is the harm caused to Colorado's prized backcountry areas, game herds and fish stocks. While they were unable to quantify it, representatives from the DOW, USFS and BLM all agree that there is a direct link between unregistered outfitting and the illegal taking of animals.

An unregistered outfitter is not legally able to obtain a land-use permit from the USFS or BLM. Thus, an unregistered outfitter has no land-base on which to conduct outfitting activities. In addition, it is more likely that an unregistered outfitter will have promised his/her clients that they will harvest an animal. Thus, it is not unreasonable to expect such an outfitter to go onto government lands without a permit and to take clients outside of the game unit for which those clients hold valid hunting licenses. The unscrupulousness of the outfitter, the theory goes, simply builds on itself.

Finally, it is important to note that outfitters themselves cannot agree on whether continued regulation is either necessary or desirable. Some argue in favor of continued regulation with relatively minor statutory revisions. Some argue in favor of regulation by the DOW. Still others argue in favor of complete deregulation, theorizing that consumers already have adequate legal remedies through Colorado's court system.

A common theme among those who advocate for a more dramatic shift in regulation, however, is a general dissatisfaction with the OOR. These individuals argue that the OOR is overzealous in its enforcement of the law against registered outfitters, and overly lax in pursuing cases against unregistered outfitters.

The reason there are so few complaints against unregistered outfitters, they argue, is that registered outfitters have grown frustrated over the OOR's unwillingness or inability to act on those complaints. As a result, they have stopped complaining.

This position presupposes, perhaps correctly, that registered outfitters complain about unregistered outfitters more than consumers because the outfitters have an economic interest in doing so. A satisfied consumer has no reason to complain, whereas a registered outfitter who loses clients to an unregistered outfitter has suffered economic harm.

There is some evidence to support this argument. In fiscal year 96-97, the OOR received 54 complaints of unregistered activity, but only 19 in fiscal year 00-01. The OOR staff is unable to explain this drop.

Additionally, there may be some credibility to the argument that the OOR is overzealous in enforcing the law with respect to registered outfitters. As Table 3 on page 13 illustrates, most complaints involve issues regarding contracts and misrepresentations, which can appear to be minor violations, but which are violations nonetheless. However, approximately half of the letters of admonition issued by the OOR include a fine. Since the minimum allowable fine is \$300, this can be, and is, perceived as overzealousness.

On the other hand, fiscal year 00-01 saw the fewest number of disciplinary actions taken by the OOR in five years. Indeed, the number of disciplinary actions taken has steadily declined from a high of 151 in fiscal year 97-98, to only 75 in fiscal year 00-01, and the OOR has not revoked a single registration since fiscal year 98-99. If the number of complaints had not also declined during this period, this trend would seem to indicate that either registered outfitters are remarkably compliant and cooperative, or that the OOR is too lax, not overzealous.

Regardless of whether the level of unregistered activity is as high as some argue, and of whether the level and amount of public harm is higher than what is verifiable, the sunset criteria require DORA to make a recommendation that is objective and based on the available evidence. This being so, DORA is obligated to confine its findings to the fact that in fiscal year 00-01, there were only 19 instances of unregistered activity and during the last five fiscal years, there have been no instances of verifiable physical harm to a consumer.

For these reasons, the General Assembly should continue the OOR until 2014. Eleven years is deemed a sufficient time period because the issues in the outfitting industry tend to remain constant from year to year, thus obviating the need to review them prior to 2014.

Recommendation 2 - Close the loophole that allows an outfitter whose registration has been suspended or revoked to obtain a new registration under a different name. Amend section 12-55.5-102(7), C.R.S., to read as follows:

“Person” means any individual, ~~firm, association, partnership, corporation, or other legal entity~~ OR BUSINESS ENTITY.

Enact section 12.55.5-102(8), C.R.S., to read as follows:

“BUSINESS ENTITY” MEANS AN ENTITY AUTHORIZED BY COLORADO LAW TO CONDUCT BUSINESS, INCLUDING, BUT NOT LIMITED TO, ANY CORPORATION, PARTNERSHIP, LIMITED LIABILITY COMPANY, OR LIMITED LIABILITY PARTNERSHIP.

Amend section 12-55.5-105(4), C.R.S., to read as follows:

~~An individual, partnership, or corporation~~ A BUSINESS ENTITY may register as an outfitter.—~~A partnership or unincorporated association consisting of more than one individual shall designate one of his members to submit an application for registration, and every corporation, in its application for registration, shall designate and appoint one of its directors, who shall also be an officer of the corporation, to submit and application for registration.~~ AN APPLICATION FOR A BUSINESS ENTITY REGISTRATION SHALL INCLUDE THE NAMES OF ALL OFFICERS, DIRECTORS, MEMBERS, PARTNERS, OWNERS OF TEN PERCENT OR MORE OF THE BUSINESS ENTITY, OR OTHER INDIVIDUALS WHO WILL HAVE MANAGING OR CONTROLLING AUTHORITY IN THE BUSINESS ENTITY. IN ADDITION, THE BUSINESS ENTITY MUST DESIGNATE ON THE APPLICATION FOR OUTFITTER REGISTRATION ONE OF ITS OFFICERS, DIRECTORS, MEMBERS, PARTNERS OR OTHER CONTROLLING OR MANAGING INDIVIDUALS TO BE THE RESPONSIBLE PARTY AND AGENT FOR THE BUSINESS ENTITY FOR ALL COMMUNICATIONS WITH THE OFFICE OF OUTFITTERS REGISTRATION. IN THE EVENT THAT THE BUSINESS ENTITY CHANGES ITS RESPONSIBLE PARTY AND AGENT, IT MUST NOTIFY THE OFFICE WITHIN TEN WORKING DAYS OF THE NAME AND CONTACT INFORMATION FOR THE NEW RESPONSIBLE PARTY AND AGENT. If such designee THE RESPONSIBLE PARTY AND AGENT FOR THE BUSINESS ENTITY does not provide guide services, he SUCH INDIVIDUAL shall not be required to comply with paragraph (b) of subsection (1) of this section.

Enact section 12-55.5-106(1.5), C.R.S., to read as follows:

NOTWITHSTANDING THE PROVISIONS OF ANY OTHER SECTION OF THIS ARTICLE, THE DIRECTOR MAY DENY THE INITIAL OR RENEWAL APPLICATION FOR REGISTRATION OF:

(I) A PERSON WHO WAS LISTED AS PARTICIPATING IN A BUSINESS ENTITY PURSUANT TO SECTION 105(2)(a) OF THIS ARTICLE WHERE SUCH BUSINESS ENTITY WAS SUBJECTED TO DISCIPLINE UNDER THIS ARTICLE;

**(II) A BUSINESS ENTITY THAT LISTS A PERSON AS A PARTICIPATING PERSON PURSUANT TO SECTION 105(2)(a) OF THIS ARTICLE WHERE THE BUSINESS ENTITY IN WHICH THE PERSON PREVIOUSLY WAS LISTED AS A PARTICIPATING PERSON WAS SUBJECTED TO DISCIPLINE UNDER THIS ARTICLE;
AND**

(III) A BUSINESS ENTITY THAT LISTS A PERSON AS A PARTICIPATING PERSON PURSUANT TO SECTION 105(2)(a) OF THIS ARTICLE WHERE SUCH PERSON WAS PREVIOUSLY SUBJECTED TO DISCIPLINE AS AN INDIVIDUAL UNDER THIS ARTICLE.

This recommendation is designed to address a rather complicated problem. Under the current statutory scheme, it is possible for the registration of an outfitter who is an individual to be revoked and then that same individual either forms a business entity to apply for a new registration, or, more commonly, has a spouse or other family member apply for a new registration, although he intends to run the business.

This is problematic because after the OOR spends its limited resources on building and prosecuting a case to revoke the original registration, it lacks the authority to deny a subsequent registration application where the individual who was revoked is a principle actor. This recommendation is intended to prevent this from happening.

As part of this sunset review, DORA staff interviewed regulators from Idaho, Montana and Wyoming. None of these states encounter this problem because in addition to regulating outfitters, they also regulate guides, which Colorado does not do. Thus, if one of these states revokes an outfitter's license, he must go back to the same board to obtain a guide's license, so the board retains jurisdiction. However, this will not work in Colorado because Colorado does not license guides.

By requiring a registered outfitter that is a business entity to report to the OOR all of that business entity's principals, the OOR can better track who is running the outfitting operation. By expressly granting to the OOR the authority to deny registration, but not making it mandatory, to any person who has been involved in disciplinary proceedings with another outfitting entity, the public is better protected from persons the OOR has already determined to be unworthy of registration.

The General Assembly should enact legislation that prevents those who have had their registrations revoked from continuing to provide outfitting services.

Recommendation 3 - Require registered outfitters and their guides to obtain and maintain certification to administer cardiopulmonary resuscitation (CPR). Amend section 12-55.5-105(1), C.R.S., to read as follows:

Except as otherwise provided in this article, the director shall issue an initial or renewal certificate of registration as an outfitter to any individual who pays the required fee and furnishes evidence satisfactory to the director that such individual:

(e) HOLDS A VALID CARDIOPULMONARY RESUSCITATION CARD ISSUED BY THE AMERICAN RED CROSS OR EVIDENCE OF EQUIVALENT TRAINING.

Amend section 12-55.5-108(2), C.R.S., to read as follows:

Any person who works as a guide must be eighteen years of age or older and must hold a valid **CARDIOPULMONARY RESUSCITATION CARD AND A VALID instructor's card in first aid or a standard first aid card issued by the American red cross or evidence of equivalent training. . .**

Currently, to become a registered outfitter, the outfitter must hold a valid instructor's card in first aid or a standard first aid card issued by the American Red Cross or provide evidence of equivalent training. In addition, any guide hired by a registered outfitter must be similarly certified in first aid.

However, neither outfitters nor guides are required to obtain training in cardiopulmonary resuscitation (CPR). Arguably, CPR training is just as, if not more, important than first aid training.

The demographics of hunters and fishermen also suggest that CPR training should be required. The typical hunter/fisherman who hires an outfitter is a middle-aged male (50-60). This age group is at a higher risk for having heart problems. Taking such an individual to elevations that can exceed 10,000 feet only exacerbates the risk of cardiac arrest.

To obtain certification from the American Red Cross as an instructor in first aid, such an individual must already possess certification in basic first aid, CPR and Automated External Defibrillation (AED). Thus, if an outfitter or a guide holds a first aid instructor's card, that individual is already CPR-certified, so this recommendation will not be burdensome on these individuals.

Some individuals have expressed concern about requiring CPR training. A first aid card is valid for three years, whereas a CPR card is only valid for one year. Thus, this recommendation would require outfitters and guides to recertify on a yearly basis.

Additionally, the cost of a first aid course through the American Red Cross is \$25, but the cost of the CPR course is \$39. There will, therefore, be an additional cost to outfitters and guides to obtain CPR certification.

One of the primary goals of the sunset process is to ensure that the regulation under review serves to protect the health, safety and welfare of the public. Requiring CPR training for individuals who take people into the backcountry where emergency medical personnel are hours away is not only reasonable, it is prudent. Although this sunset review did not discover any instances in which the administration of CPR was warranted, requiring such training is a relatively easy way to proactively ensure the health and safety of hunters and fishermen in backcountry areas.

The General Assembly should require outfitters and guides to obtain and maintain CPR-certification.

Recommendation 4 - Decrease the minimum allowable fine for administrative violations from \$300 to \$100, and mandate a fine of \$1,000 to \$5,000 per violation for unregistered activity. Amend section 12-55.5-107(1), C.R.S., to read as follows:

Any person who violates the provisions of this article or the rules and regulations of the director promulgated under this article may be penalized by the director upon a finding of a violation pursuant to article 4 of title 24, C.R.S., as follows:

(a) In the first administrative proceeding against any person, a fine of not less than ~~three~~ ONE hundred dollars but not more than five hundred dollars per violation;

(b) In any subsequent administrative proceeding against any person for transactions occurring after a final agency action determining that a violation of this article has occurred, a fine of not less than one thousand dollars but not more than two thousand dollars PER VIOLATION;

(c) IN ANY ADMINISTRATIVE PROCEEDING AGAINST ANY PERSON FOR TRANSACTIONS INVOLVING VIOLATION OF SECTION 103(1) OF THIS ARTICLE, A FINE OF NOT LESS THAN ONE THOUSAND DOLLARS BUT NOT MORE THAN FIVE THOUSAND DOLLARS PER VIOLATION.

The reduction for a first-time violation from \$300 to \$100 is warranted for several reasons. Many outfitters and the OOR often find that discipline is warranted but that the nature of the violation at issue merits more than a letter of admonition, but less than a \$300-fine. Unfortunately, the minimum fine allowable is \$300, and the OOR, in many instances, would prefer to impose a less severe penalty.

By reducing the minimum fine for first-time violations, the OOR would achieve greater flexibility in its fining authority and simultaneously address concerns that it is overzealous in its imposition of fines. Notably, this recommendation would allow the OOR to impose a less, not more, severe penalty so that such penalties can better be imposed in proportion to the nature and severity of the underlying violation.

The second part of this recommendation, however, is slightly different. Currently, the most severe action the OOR can take against an unregistered outfitter, for a first offense, is to issue a cease and desist order and impose a maximum fine of \$500 per violation. For a second offense, the maximum fine is \$2,000.

Whereas fishing outfitters may charge as little as \$50-\$100 per day for minimal guide services, a typical hunting outfitter charges between \$1,000 and \$3,000 for a week's hunting trip. It is not difficult to see that a \$500 fine means little to an unregistered outfitter who could easily make thousands of dollars through illegal outfitting. Thus, a \$500 fine for unregistered activity can have little to no deterrent effect.

A \$5,000-per-violation-fine, however, could easily amount to a lot of money quite quickly. For example, a hunting outfitter who books 10 hunters for one hunting season (one week) at \$1,000 per hunter stands to make \$10,000. Assuming a \$500 per violation fine, where each hunter represents a separate violation, this outfitter faces a maximum fine of \$2,500. The outfitter would still retain \$7,500, a potentially profitable situation. However, with a \$5,000 maximum fine, this same outfitter would face a fine of \$50,000. Thus, the fine would cost the outfitter more than the gross revenue from the ten hunters, making unregistered activity a truly expensive, risky proposition.

Part of the deterrent value of any fine rests upon the theory that if enough money is at stake, a potential violator will rethink whether to violate. That is, the cost of being caught must exceed the potential profit to be gained by violating, or, at the very least, sufficiently erode the profit-potential.

This leads to the inevitable question, however, of what leads an outfitter to decide not to register. It is not difficult to register with the OOR. The cost of an initial registration is \$375, and only \$195 to renew each year. Additionally, the \$10,000-bond that is required by statute can be obtained for as little as \$100, and the minimal liability insurance can be obtained for as little as \$1,000. Thus, the actual cost of an initial registration is approximately \$1,500, which is significantly less than what an outfitter can earn during a season.

While these costs may persuade some outfitters to avoid registering, other issues cannot be discarded. While no one can say for certain, many outfitters and law enforcement personnel theorize that some outfitters refuse to seek registration because either they were once registered and had their registrations revoked, that they are from out of state and do not think they will be caught, or that they are individuals who simply resist registration on principle. While it would seem that no level of fine would force such people to change their principles and come into compliance, it is unlikely that they would continue to violate the law if getting caught would actually cost them money, rather than simply decreasing their profit, as the current fining levels do.

While the degree to which unregistered activity occurs is highly contentious, such is not necessarily relevant to this recommendation. If the General Assembly agrees with Recommendation 1 of this sunset report and continues regulation because regulation is necessary to protect the health, safety and welfare of the public, then even one unregistered outfitter poses a risk to the public. While DORA is not prepared to recommend that all of the state's resources be expended to track down and eliminate all unregistered outfitters, it is not unreasonable to authorize the imposition of a fine that would make such activity prohibitively expensive for those who are caught, thus increasing the fine's deterrent effect.

Thus, even if the OOR never imposes a \$5,000-per-violation-fine, the threat of such a fine will have a chilling effect on unregistered activity and better protect the health, safety and welfare of the public.

Recommendation 5 - Include the addiction to, dependence upon, or habitual use of cocaine, marihuana or marihuana concentrate as possible grounds for discipline. Amend section 12-55.5-106(1)(g), C.R.S., to read as follows:

(1) The director may deny, suspend, revoke, or place on probation and outfitter's registration if the applicant or holder:

(g) Is addicted to or dependent upon alcohol or any controlled substance, ~~within the meaning of part 3 of article 22 of this title~~ AS DEFINED IN SECTION 18-18-102(5), or is a habitual user of said controlled substance, ~~if the use, addiction, or dependency is a danger to clients or prospective clients.~~

Section 12-22-303(7), C.R.S., a section of the Drugs and Druggists Act (Drug Act), defines a controlled substance as "a drug, substance, or immediate precursor included in schedules I to IV of Part 2 of Article 18 of Title 18, C.R.S."

Section 18-18-102(5), C.R.S., a section of the Colorado Criminal Code (Criminal Code) defines a controlled substance in an identical manner except that it goes on to state, "including cocaine, marihuana, and marihuana concentrate."

Tetrahydrocannabinols, commonly referred to as "THC", is listed as a Schedule I Controlled Substance at section 18-18-203(2)(c)(XXIII), C.R.S. The Drug Act, at section 12-22-303(32)(a), C.R.S., defines "THC" as,

synthetic equivalents or the substances contained in the plant, or in the resinous extractives of, cannabis, sp., or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity . . .

Thus, THC is a part of the marihuana plant, but an individual could potentially test positive for marihuana and not THC, which is the controlled substance under the Drug Act.

In 2001, the State Board of Nursing (BON) sought to take disciplinary action against a Certified Nurse Aide (CNA) who reported to work in an intoxicated state and tested positive for cocaine, alcohol and marihuana. Because the nurse aide practice act references the Drug Act, which includes THC as a controlled substance, but not marihuana specifically, the administrative law judge (ALJ) requested the BON's Assistant Attorney General, establish the relationship between THC and marihuana in order to proceed to hearing whether the marihuana in the CNA's system was grounds for disciplinary action. This involved research, legal analysis of the relevant statutes and obtaining an affidavit from a pharmacist.

Since THC is listed as a Schedule I Controlled Substance, and the Criminal Code specifically includes marihuana in its definition of a controlled substance, it is clear that the General Assembly intended that an outfitter who is found to have abused or excessively or habitually used marihuana be subject to disciplinary action. The recommended amendment will more clearly state the General Assembly's intention.

Two other points are worth noting in relation to this issue. First, most, if not all, of Colorado's professional practice acts contain language similar to that at issue here – they reference the Drug Act. In order to impose consistency across the practice acts, Recommendation 8 in the Colorado State Board of Pharmacy Sunset Report that is being presented during the current legislative session recommends that the Drug Act's definition of "controlled substance" be amended to conform to the Criminal Code's definition.

Finally, in 2000, the Colorado Constitution was amended to legalize the use of marihuana for people suffering from debilitating medical conditions. Colo.Const. art. XVIII, §14. This recommendation will not infringe upon an individual's opportunity to exercise the rights granted under this constitutional provision so long as the outfitter does not provide outfitting services while under the influence of marihuana, just as an outfitter could receive discipline for providing such services while under the influence of alcohol. For an individual who has obtained the necessary approvals and permissions to use marihuana for medicinal purposes, a showing of abuse, or habitual or excessive use would be similar to such a showing for alcohol.

Recommendation 6 - Change the timelines for appealing a letter of admonition to 30 days from the date of mailing, rather than 20 days from the date of proven receipt. Amend section 12-55.5-106(3), C.R.S., to read as follows:

. . . a letter of admonition may be sent by certified mail to the outfitter against whom a complaint was made and a copy thereof to the person making the complaint, but, when the letter of admonition is mailed by certified mail by the director to the outfitter complained against, such outfitter shall be advised that he SUCH OUTFITTER has the right to request in writing, within ~~twenty~~ THIRTY days after ~~proven receipt of the~~ DATE ON WHICH THE letter WAS MAILED, that formal disciplinary proceedings be initiated against him to adjudicate the propriety of the complaint on which the letter of admonition is based. If such request is timely made, the letter of admonition shall be deemed vacated, and the matter shall be processed by means of formal disciplinary proceedings.

In practice, the current statutory provision requires a letter of admonition to be mailed via certified mail, return receipt requested. This is the only verifiable way to prove the date on which such letter is received, which begins the tolling period for requesting formal disciplinary proceedings.

The Colorado Court of Appeals recently addressed this issue in *Colorado State Board of Medical Examiners v. Roberts*, 42 P.3d 70 (Colo. App. 2001). In *Roberts*, the court reviewed a provision in the Medical Practice Act that is substantially similar to the provision under discussion here. The Board of Medical Examiners issued a letter of admonition to Dr. Roberts and mailed it to him at his place of business via certified mail, return receipt requested. However, Dr. Roberts and his staff refused to sign for the letter on two separate occasions. Three months later, Dr. Roberts requested that the Board of Medical Examiners vacate the letter of admonition and institute formal disciplinary proceedings against him. The Board of Medical Examiners refused, stating that two notices of attempted delivery by the U.S. Postal Service was sufficient to constitute receipt and begin the 20-day tolling period for requesting formal disciplinary proceedings.

Dr. Roberts and the Court of Appeals disagreed. In focusing on the plain language of the statute, the court held that “receipt” in the statute requires actual receipt.

Since the outfitter practice act contains language that is substantially similar to the statutory provision reviewed in *Roberts*, it is not unreasonable to conclude that at some point, the OOR may encounter a similar problem.

The recommended language attempts to expedite the disciplinary process while protecting the rights of the outfitter. By requiring the letter of admonition to be mailed by certified mail, the OOR will be able to establish the date on which it is mailed. To allow for delivery time, and to be consistent with other appeals timelines, the time within which an outfitter may request formal disciplinary proceedings is extended from 20 days to 30 days.

This recommendation neither restricts nor expands the powers of the OOR or the rights of the outfitter. Rather, it attempts to correct a procedural problem that may be exacerbated by the *Roberts* decision.

Recommendation 7 - Revise the definition of “guide” to include employees and independent contractors. Amend section 12-55.5-102(4), C.R.S., to read as follows:

“Guide” means any individual employed BY AN OUTFITTER for compensation ~~by an outfitter for the purpose of guiding, leading, or assisting any other individual to an from a given place~~ OR WHO HAS CONTRACTED INDEPENDENTLY WITH AN OUTFITTER, WHO ACCOMPANIES THE OUTFITTER’S CLIENT(S) DURING OUTDOOR ACTIVITIES THAT ARE DIRECTLY RELATED TO ACTS OR PRACTICES CONSTITUTING OUTFITTING SERVICES.

Due to the seasonal nature of outfitting, very few outfitters hire guides as employees. Rather, most are hired as independent contractors. This recommendation seeks to include independent contractors in the definition of “guide” and to more clearly associate what constitutes guiding activities with those of outfitting services.

Recommendation 8 – Direct the Office of Outfitters Registration to work with the Colorado Division of Wildlife to develop a system whereby hunting and fishing licenses are accompanied by a notice stating that it is illegal to provide outfitting services in Colorado without registering with the Office of Outfitters Registration. Enact section 12-55.5-116.1, C.R.S., to read as follows:

THE OFFICE OF OUTFITTERS REGISTRATION AND THE COLORADO DIVISION OF WILDLIFE SHALL DEVELOP A SYSTEM WHEREBY ALL HUNTING AND FISHING LICENSES ARE ACCOMPANIED BY, AT THE TIME OF ISSUANCE, A NOTICE THAT ALERTS LICENSEES THAT IT IS ILLEGAL TO PROVIDE OUTFITTING SERVICES IN COLORADO WITHOUT REGISTERING WITH THE OFFICE OF OUTFITTERS REGISTRATION.

If the General Assembly agrees with Recommendation 1 of this sunset report and continues regulation because regulation is necessary to protect the health, safety and welfare of the public, then even one unregistered outfitter poses a risk to the public.

The recommended requirement is advisable to better protect the public. In conversations with consumers from outside of Colorado, many indicated that determining whether outfitters are regulated in Colorado was a difficult task. Determining whether a particular outfitter is registered can also be difficult, according to consumers, when they do not know who to ask for the information. The recommended notice will alert the consumer that Colorado regulates outfitters. It will further alert the consumer who is about to hire an outfitter to inquire of the OOR as to whether that outfitter is registered.

Currently, the DOW provides a brochure to all purchasers of hunting and fishing licenses. The brochure for hunting contains two small statements, which could easily be overlooked, stating that outfitters and guides must be registered with the OOR. However, the brochure for fishing says nothing about outfitters.

By allowing the OOR and the DOW to work together to develop the recommended notice, the two agencies can determine the best manner in which to alert hunters and fishermen of the law. Such a notice may consist of nothing more than increasing the prominence of the notice already contained in the DOW brochure or may consist of developing a separate notice to be provided along with a license to hunt or fish.

There are, of course, other means by which the state could achieve the same objective. The OOR and many outfitters have argued in favor of a new statutory provision that would impose criminal liability on hunters and fishermen who hire unregistered outfitters. Such a statute would have to be drafted to either require the establishment of intent, or it would have to be a strict liability provision, that is, no intent. Both propositions are troublesome. It would be difficult to prove in court that someone knowingly hired an unregistered outfitter. On the other hand, under a strict liability approach, it would be inherently unfair to punish someone for violating a law they did not know existed. This could also have a chilling effect on the tourist aspect of hunting and fishing.

Because of these problems, DORA recommends a less restrictive proposal – simply take reasonable steps to notify hunters and fishermen that if they are going to hire an outfitter in Colorado, that outfitter must be registered, but do not impose liability on the hunter or fisherman. Without first attempting to ensure that hunters and fishermen know that outfitters must be registered and waiting to see whether such knowledge curtails unregistered activity, imposing criminal liability is unwarranted. The state should first take steps to notify hunters and fishermen of this requirement and then determine the level of compliance. If unregistered activity continues to be as large of a problem as many outfitters suggest and there is objective evidence of this, then, perhaps, a more restrictive or punitive approach would be warranted.

In addition, the recommended notice will also help to further reduce the number of unregistered outfitters and increase the value to all outfitters of obtaining a registration because the proposed notice will alert the consumer to ask whether the outfitter is registered.

To help reduce the number of unregistered outfitters and to better ensure that hunters and fishermen are aware of the law, the General Assembly should direct the OOR and the DOW to develop a notice that alerts such individuals that if they are going to hire an outfitter in Colorado, that outfitter must be registered.

Recommendation 9 - Repeal the “grandfather” clause in Article 55.5 of Title 12, C.R.S., as obsolete. Repeal section 12-55.5-116, C.R.S., as follows:

~~Any person who on June 30, 1988, holds an outfitter’s license in good standing under the law of this state in effect on such date shall be registered as an outfitter by the director effective July 1, 1988, pursuant to the provisions of this article and the submittal to the director of a surety bond in the minimum sum of ten thousand dollars, as provided in section 12-55.5-105(1)(d). Such registration shall be renewable as provided in this article.~~

This section was originally enacted to permit those outfitters that were licensed under the old outfitters practice act to become registered under the current statute with minimal difficulty. This section is no longer necessary because even outfitters that were registered in this manner were required to renew their registrations under the current statute. Since outfitter registrations are renewed annually, this provision is obsolete and should be repealed.

Recommendation 10 – The following statutory changes should be adopted as simple housekeeping measures. No policy implications are intended by such changes.

Repeal part of section 12-55.5-102(5), C.R.S., and reenact as section 12-55.5-103.1, C.R.S., to read as follows:

~~12-55.5-102(5) “Outfitter” means any individual soliciting to provide or providing, for compensation, outfitting services for the purpose of hunting or fishing on land that such individual does not own. “Outfitter” does not include an individual whose only service is providing motor vehicles, horses, or other equipment for rent.~~

12-55.5-103.1. EXEMPTIONS FROM REGISTRATION. (1) NOTHING IN THIS ARTICLE SHALL PROHIBIT SERVICES BY INDIVIDUALS WHOSE ONLY ACT OR PRACTICE IS PROVIDING MOTOR VEHICLES, LIVESTOCK, OR OTHER EQUIPMENT FOR RENT.

Repeal sections 12-55.5-108(2) and (3), C.R.S., and reenact as sections 12-55.5-103.2(1) and (2), C.R.S., to read as follows:

12-55.5-108. Penalties – cease and desist orders.

~~(2) Any person who works as a guide must be eighteen years of age or older and must hold a valid instructor's card in first aid or a standard first aid card issued by the American red cross or evidence of equivalent training. A person who violates this subsection (2) is guilty of a misdemeanor and shall be punished by a fine of one hundred dollars.~~

~~(3) It is a violation of this article for any person whose outfitter registration has been revoked or suspended to work as a guide.~~

12-55.5-103.2. GUIDES – REQUIREMENTS. (1) ANY PERSON WHO WORKS AS A GUIDE MUST BE EIGHTEEN YEARS OF AGE OR OLDER AND MUST HOLD A VALID CARDIOPULMONARY RESUSCITATION CARD AND VALID INSTRUCTOR'S CARD IN FIRST AID OR A STANDARD FIRST AID CARD ISSUED BY THE AMERICAN RED CROSS OR EVIDENCE OF EQUIVALENT TRAINING. A PERSON WHO VIOLATES THIS SUBSECTION (2) IS GUILTY OF A MISDEMEANOR AND SHALL BE PUNISHED BY A FINE OF ONE HUNDRED DOLLARS.

(2) IT IS A VIOLATION OF THIS ARTICLE FOR ANY PERSON WHOSE OUTFITTER REGISTRATION HAS BEEN REVOKED OR SUSPENDED TO WORK AS A GUIDE.

Administrative Recommendation 1 – The Office of Outfitters Registration should immediately cease filing complaints for accumulative effect.

Occasionally, the OOR files complaints for accumulative effect, where the alleged activity constitutes a minor violation or where it will be particularly difficult to prove that any violation occurred. In essence, the OOR refuses to dismiss the case, but also refuses to take disciplinary action on the case. Rather, it holds the complaint in abeyance until such time as it can determine whether the outfitter involved in the case receives any subsequent complaints, at which time the OOR may reopen the original case and take disciplinary action. If no additional complaints are received within three years, the OOR purges the file of the original complaint.

As Table 4 on page 18 and excerpted below illustrates, the OOR has not engaged in this practice often over the course of the last five fiscal years, but it has used this mechanism to unjustly retain jurisdiction over cases.

**Table 4
Disciplinary Information
Excerpt**

Type of Action	FY 96-97	FY 97-98	FY 98-99	FY 99-00	FY 00-01
Filed for Accumulative Effect	8	17	12	10	9

The OOR does not have the statutory authority to engage in this practice. Section 12-55.5-106(1), C.R.S., specifically authorizes the Director to “deny, suspend, revoke, or place on probation an outfitter’s registration” if the outfitter violates any of the statutes or rules of the OOR. Additionally, section 12-55.5-107, C.R.S., authorizes the Director to impose administrative fines. Finally, if the Director determines that a violation occurred, but that formal discipline is not warranted, the Director may issue a letter of admonition. §12-55.5-106(3), C.R.S. Neither the OOR nor the Director is authorized to file complaints for accumulative effect.

The OOR justifies this practice by pointing out that the statute merely authorizes the types of discipline to be imposed if a violation is found to have occurred. The statute does not provide guidance as to how the OOR is supposed to dispose of a case. By way of illustration, the OOR argues that the statute does not specifically authorize the OOR to dismiss complaints.

However, the purpose of an enabling statute is to delineate what a given agency may do in order to enforce its legislative mandate. Such statutes do not typically outline those actions in which the agency may not engage. To do so would require statutes to be unnecessarily large and cumbersome. Some sense of reasonableness and fairness is required of the agency.

Finally, however, the practice of filing a complaint for accumulative effect is inherently unfair to the outfitter named in the complaint. In essence, the outfitter can have no closure on such a case for three years. More importantly, if a complaint is actionable it must be actionable on its own. It makes no sense that a complaint only becomes actionable if another complaint is subsequently filed.

For these reasons, the OOR should immediately cease its practice of filing complaints for accumulative effect.

Administrative Recommendation 2 – The Office of Outfitters Registration should revise its initial registration and renewal processes to require outfitters to submit proof of cardiopulmonary resuscitation (CPR) certification.

When an outfitter applies for initial registration with the OOR, that outfitter must submit proof of surety bond, liability insurance and a first aid card. This is to ensure that the outfitter has complied with the registration requirements.

To renew their registrations, outfitters must submit copies of their first aid cards. This is to ensure continued compliance with the minimal public safety protections imposed by the outfitters practice act.

To further enhance these protections, Recommendation 3 of this report recommends that outfitters and guides obtain certification in CPR in addition to first aid.

This administrative recommendation simply seeks to ensure compliance with the new statutory requirement imposed by Recommendation 3. Requiring the submission of copies of both first aid and CPR cards should not significantly add to the administrative burden of processing initial and renewal registrations because the OOR already processes copies of first aid cards on an annual basis.

For these reasons, the OOR should require outfitters to submit, at the time of initial registration and registration renewal, proof of certification in CPR.

Appendix A - Sunset Statutory Evaluation 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; and
- (IX) Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.

Appendix B – Outfitter Practice Statutes

12-55.5-101 - Legislative declaration.

It is the intent of the general assembly to promote and encourage residents and nonresidents alike to participate in the enjoyment and use of the mountains, rivers, and streams of Colorado and the state's fish and game and, to that end, in the exercise of the police power of this state for the purpose of safeguarding the health, safety, welfare, and freedom from injury or danger of such residents and nonresidents, to register and regulate those persons who, for compensation, provide equipment or personal services to such residents and nonresidents for the purpose of hunting and fishing. It is neither the intent of the general assembly to interfere in any way with the business of livestock operations or to prevent livestock owners from loaning or leasing buildings or animals to persons, nor is it intended to prevent said owner from accompanying a person or persons on land that such person owns, nor is it the intent of the general assembly to interfere in any way with the general public's ability to enjoy the recreational value of Colorado's mountains, rivers, and streams when the services of commercial outfitters are not utilized nor to interfere with the right of the United States to manage the public lands under its control.

12-55.5-102 - Definitions.

As used in this article, unless the context otherwise requires:

(1) "Compensation" means making, or attempting to make, a profit, salary, or increase in business or financial standing, or supporting any part of other programs or activities, to include receiving fees, charges, dues, service swaps, or something which is not strictly a sharing of actual expenses incurred from amounts received from or for outfitting services rendered or to be rendered.

(1.5) "Consultant" means a person who is hired by the director to assist in any investigation initiated under this article or any member of an advisory committee appointed pursuant to section 12-55.5-111.

(2) "Director" means the director of the division of registrations in the department of regulatory agencies.

(3) "Division" means the division of registrations in the department of regulatory agencies.

(4) "Guide" means any individual employed for compensation by an outfitter for the purpose of guiding, leading, or assisting any other individual to and from a given place.

(5) "Outfitter" means any individual soliciting to provide or providing, for compensation, outfitting services for the purpose of hunting or fishing on land that such individual does not own. "Outfitter" does not include an individual whose only service is providing motor vehicles, horses, or other equipment for rent.

(5.5) "Outfitting services" means providing transportation of individuals, equipment, supplies, or wildlife by means of vehicle, vessel, or pack animal, facilities including but not limited to 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 take or attempted take of wildlife.

(6) "Peace officer" means a level I or level Ia or level II peace officer as defined in section 18-1-901 (3) (I), C.R.S.

(7) "Person" means any individual, firm, association, partnership, corporation, or other legal entity.

12-55.5-103 - Registration required - fees.

(1) No individual shall engage in activities as an outfitter or advertise in any publication or represent himself as an outfitter unless he first obtains a certificate of registration from the division and unless such certificate of registration is in full force and effect and in such individual's immediate possession. No individual shall continue to act as an outfitter if such registration has been suspended or revoked or has expired.

(2) An applicant for registration as an outfitter shall follow the procedures provided in section 12-55.5-105 and any other procedures required by the director. All applicants shall pay a nonrefundable registration fee to be determined by the director, which fee shall be adequate to cover the direct and indirect expenses incurred for implementation of the provisions of this article. Such registration shall be renewable pursuant to the provisions of this article and upon payment of said fee.

12-55.5-104 - Powers and duties of the director.

(1) In addition to all other powers and duties conferred or imposed upon the director by this article or by any other law, the director:

(a) May promulgate rules and regulations pursuant to the provisions of section 24-4-103, C.R.S., to govern the registration of outfitters to carry out the purposes of this article;

(b) To aid in any hearing or investigation instituted pursuant to this article, shall have the power to issue subpoenas to compel the attendance and testimony of witnesses and the production of books, client records, and papers and shall also have the power to issue subpoenas commanding the production of copies of any records containing information relevant to the outfitting activities of any outfitter;

(c) Is authorized to apply for injunctive relief, in the manner provided by the Colorado rules of civil procedure, to enforce the provisions of this article or to restrain any violation thereof. In such proceedings, it shall not be necessary to allege or prove either that an adequate remedy at law does not exist or that substantial or irreparable damage would result from the continued violation thereof.

12-55.5-105 - Issuance of certificate of registration - violations.

(1) Except as otherwise provided in this article, the director shall issue an initial or renewed certificate of registration as an outfitter to any individual who pays the required fee and furnishes evidence satisfactory to the director that such individual:

(a) Is eighteen years of age or older;

(b) Holds a valid instructor's card in first aid or a standard first aid card issued by the American red cross or evidence of equivalent training;

(c) Possesses minimum liability insurance coverage in the amount of fifty thousand dollars for bodily injury to one person in any single accident and one hundred thousand dollars for bodily injury to all persons in any single accident; and

(d) Has submitted to the director a surety bond in the minimum sum of ten thousand dollars, executed by the applicant as principal and by a surety company qualified and authorized to do business in this state as surety. Such bond shall be conditioned upon compliance with the provisions of this article and with the rules and regulations promulgated under this article.

(2) and (3) (Deleted by amendment, L. 93, p. 1490, § 3, effective July 1, 1993.)

(4) An individual, partnership, or corporation may register as an outfitter. A partnership or unincorporated association consisting of more than one individual shall designate one of its members to submit an application for registration, and every corporation, in its application for registration, shall designate and appoint one of its directors, who shall also be an officer of the corporation, to submit an application for registration. If such designee does not provide guide services, he shall not be required to comply with paragraph (b) of subsection (1) of this section.

12-55.5-106 - Disciplinary actions - grounds for discipline.

(1) The director may deny, suspend, revoke, or place on probation an outfitter's registration if the applicant or holder:

(a) Violates any order of the division or the director or any provision of this article or the rules and regulations established under this article;

(b) Fails to meet the requirements of section 12-55.5-105 or uses fraud, misrepresentation, or deceit in applying for or attempting to apply for registration;

(c) Violates any local, state, or federal law related to public land management, wildlife, health, or cruelty to animals;

(d) Is convicted of or has entered a plea of nolo contendere or guilty to a felony; except that the director shall be governed by the provisions of section 24-5-101, C.R.S., in considering such conviction or plea;

(e) Uses false, deceptive, or misleading advertising;

(f) Misrepresents his services, facilities, or equipment to a client or prospective client;

(g) Is addicted to or dependent upon alcohol or any controlled substance, within the meaning of part 3 of article 22 of this title, or is a habitual user of said controlled substance, if the use, addiction, or dependency is a danger to clients or prospective clients;

(h) Has incurred disciplinary action related to the practice of outfitting in another jurisdiction. Evidence of such disciplinary action shall be prima facie evidence for denial of registration or other disciplinary action if the violation would be grounds for such disciplinary action in this state.

(i) Has been convicted of second or third degree criminal trespass pursuant to section 18-4-503 or 18-4-504, C.R.S.; except that the director shall be governed by the provisions of section 24-5-101, C.R.S., in considering such conviction;

(j) Hires any person as a guide who fails to meet the requirements of section 12-55.5-108 (2); or

(k) Serves or consumes alcohol while engaged in the activities of an outfitter, if the applicant or holder is under twenty-one years of age.

(2) Any proceeding to deny, suspend, revoke, or place on probation a registration shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S. The director may use an administrative law judge employed by the division of administrative hearings in the department of personnel to conduct hearings. Any person whose registration is denied, suspended, placed on probation, or revoked shall pay for the costs incurred in bringing and conducting such proceeding.

(3) When a complaint or an investigation discloses a violation of this article which, in the opinion of the director, does not warrant formal action but which should not be dismissed as being without merit, a letter of admonition may be sent by certified mail to the outfitter against whom a complaint was made and a copy thereof to the person making the complaint, but, when a letter of admonition is sent by certified mail by the director to an outfitter complained against, such outfitter shall be advised that he has the right to request in writing, within twenty days after proven receipt of the letter, that formal disciplinary proceedings be initiated against him to adjudicate the propriety of the conduct upon which the letter of admonition is based. If such request is timely made, the letter of admonition shall be deemed vacated, and the matter shall be processed by means of formal disciplinary proceedings.

12-55.5-107 - Penalties.

(1) Any person who violates the provisions of this article or the rules and regulations of the director promulgated under this article may be penalized by the director upon a finding of a violation pursuant to article 4 of title 24, C.R.S., as follows:

(a) In the first administrative proceeding against any person, a fine of not less than three hundred dollars but not more than five hundred dollars per violation;

(b) In any subsequent administrative proceeding against any person for transactions occurring after a final agency action determining that a violation of this article has occurred, a fine of not less than one thousand dollars but not more than two thousand dollars.

(1.5) Any person who is found to have committed a violation pursuant to subsection (1) of this section shall pay for the costs incurred in bringing and conducting such administrative proceeding.

(2) In addition to the penalties provided in subsection (1) of this section, the director, upon a finding of a violation, may deny, suspend, revoke, or place on probation an outfitter's registration or take other disciplinary action as provided in section 12-55.5-106 (3).

(3) Any person who engages in activities as an outfitter shall maintain all applicable documents, records, and other items, for the current year and the preceding four years at the address listed on the registration, required to be maintained by this article or by the rules or regulations of the director when requested to do so by any peace officer. Any such person who refuses to permit the inspection of such documents, records, or items is guilty of a misdemeanor and shall be punished by a fine of one hundred dollars.

(4) (Deleted by amendment, L. 93, p. 1491, § 5, effective July 1, 1993.)

12-55.5-107.5 - Violations - penalties - distribution of fines collected.

(1) Any person who violates section 12-55.5-103 (1) is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than one thousand dollars nor more than five thousand dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment. Upon a second or subsequent conviction, such person commits a class 5 felony and shall be punished as provided in section 18-1-105, C.R.S.

(2) All fines collected pursuant to this article shall be distributed as follows:

(a) Fifty percent divided by the court between any federal, state, or local law enforcement agency assisting with an investigation;

(b) Fifty percent to the division for the cost of administering this article.

12-55.5-108 - Penalties - cease and desist orders.

(1) (a) If, as the result of an investigation of a complaint by any person or of an investigation on his own motion, the director determines that any person who is acting or has acted without the required registration or is in violation of this article, the director may issue an order to cease and desist such activity. The order shall set forth the statutes and rules and regulations alleged to have been violated, the facts alleged to have constituted the violation, and the requirement that all unlawful acts cease forthwith. The person so ordered may request a hearing on the question of whether any violation occurred if such request is made within thirty days after the date of service of the order to cease and desist. The hearing shall be conducted in accordance with the provisions of article 4 of title 24, C.R.S.

(b) In the event that any person fails to comply with a cease and desist order, the director may request the attorney general or the district attorney for the judicial district in which the alleged violation exists to bring, and if so requested he shall bring, a suit for a temporary restraining order and for injunctive relief to prevent any further or continued violation of the order.

(c) No stay of a cease and desist order shall be issued before a hearing thereon involving both parties.

(d) Matters brought before a court pursuant to this section shall have preference over other matters on the court's calendar.

(2) Any person who works as a guide must be eighteen years of age or older and must hold a valid instructor's card in first aid or a standard first aid card issued by the American red cross or evidence of equivalent training. A person who violates this subsection (2) is guilty of a misdemeanor and shall be punished by a fine of one hundred dollars.

(3) It is a violation of this article for any person whose outfitter registration has been revoked or suspended to work as a guide.

12-55.5-109 - Contracts for outfitting services - writing required.

(1) Prior to engaging in any activity as an outfitter, an outfitter shall provide a written contract to the client signed by both the outfitter and the client, stating at least the following terms:

(a) Type of services to be provided;

(b) Dates of service;

(c) Transportation arrangements;

(d) Costs of the services;

(e) Ratio of clients to guides; and

(f) The outfitter's policy regarding cancellation of the contract and refund of any deposit.

(2) No action may be maintained by an outfitter for breach of a contract or agreement to provide outfitting services or for the recovery of compensation for services rendered under such contract or agreement if the outfitter has failed to comply with the provisions of this article.

(3) Any written contract provided pursuant to this section shall also contain a written statement that pursuant to section 12-55.5-105 (1) (c) and (1) (d) outfitters are bonded and required to possess the minimum level of liability insurance and that the activities of outfitters are regulated by the director of the division of registrations in the department of regulatory agencies.

12-55.5-110 - Other remedies - contracts void - public nuisance - seizure of equipment.

(1) Every agreement or contract for the services of an outfitter shall be void and unenforceable by the outfitter unless such outfitter is duly registered with the division under the provisions of this article when such services are contracted for and performed.

(2) Every motor vehicle, trailer, vessel, firearm, weapon, trap, equipment, livestock, or other personal property used in outfitting services in violation of the provisions of this article is declared to be a class 2 public nuisance. Unless in conflict with the specific provisions of this section, the provisions of article 13 of title 16, C.R.S., shall apply to any action taken pursuant to this section.

(3) (a) Any personal property subject to seizure under this section which is seized as a part of or incident to a criminal proceeding for violation of this article and for which disposition is not provided by another statute of this state shall be disposed of as provided in this section.

(b) The court may order any such property sold by the director in the manner provided for sales on execution.

(c) The proceeds of such sale shall be applied as follows:

(I) To the fees and costs of removal and sale;

(II) To the payment of any costs the state has incurred from such action; and

(III) The balance, if any, to the office of the district attorney who has brought such action.

12-55.5-111 - Advisory committee.

The director shall appoint an advisory committee to make recommendations concerning outfitters, which committee shall serve at the request and pleasure of the director. The members of the advisory committee shall receive no compensation but shall be reimbursed for actual and necessary expenses incurred in the performance of their duties under this article.

12-55.5-112 - Immunity.

Any person acting as a consultant to the director, any witness testifying in a proceeding authorized under this article, and any person who lodges a complaint pursuant to this article shall be immune from liability in any civil action brought against him for acts occurring while acting in his capacity as a consultant, witness, or complainant, respectively, if such individual was acting in good faith within the scope of his respective capacity, made a reasonable effort to obtain the facts of the matter as to which he acted, and acted in the reasonable belief that the action taken by him was warranted by the facts.

12-55.5-113 - Enforcement.

Every peace officer, as defined in section 12-55.5-102 (6), is hereby authorized to assist the director in the enforcement of the provisions of this article and the rules and regulations prescribed by the director.

12-55.5-114 - Fees - cash fund.

Except as otherwise provided in this article and in section 12-55.5-109, all fees collected pursuant to this article shall be transmitted to the state treasurer, who shall credit the same to the division of registrations cash fund created pursuant to section 24-34-105 (2) (b), C.R.S. The general assembly shall make annual appropriations from the division of registrations cash fund for expenditures of the division incurred in the performance of its duties under this article.

12-55.5-115 - Judicial review.

The court of appeals shall have initial jurisdiction to review all final actions and orders that are subject to judicial review. Such proceedings shall be conducted in accordance with section 24-4-106 (11), C.R.S.

12-55.5-116 - Persons licensed under previous law.

Any person who on June 30, 1988, holds an outfitter's license in good standing under the law of this state in effect on such date shall be registered as an outfitter by the director effective July 1, 1988, pursuant to the provisions of this article and the submittal to the director of a surety bond in the minimum sum of ten thousand dollars, as provided in section 12-55.5-105 (1) (d). Such registration shall be renewable as provided in this article.

12-55.5-117 - Repeal of article - review of functions.

Unless continued by the general assembly, this article is repealed, effective July 1, 2003, and those powers, duties, and functions of the division specified in this article are abolished. The provisions of section 24-34-104 (5) to (12), C.R.S., concerning a wind-up period, an analysis and evaluation, public hearings, and claims by or against an agency shall apply to the powers, duties, and functions of the division specified in this article.