



COLORADO

**Department of
Regulatory Agencies**

Colorado Office of Policy, Research &
Regulatory Reform

**2018 Sunset Review:
Pet Animal Care and Facilities Act**

October 15, 2018



COLORADO

**Department of
Regulatory Agencies**

Executive Director's Office

October 15, 2018

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

Dear Members of the General Assembly:

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

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

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

The Colorado Office of Policy, Research and Regulatory Reform (COPRRR), located within my office, is responsible for fulfilling these statutory mandates. Accordingly, COPRRR has completed the evaluation of the Pet Animal Care and Facilities Act. I am pleased to submit this written report, which will be the basis for COPRRR's oral testimony before the 2019 legislative committee of reference.

The report discusses the question of whether there is a need for the regulation provided under Article 80 of Title 35, C.R.S. The report also discusses the effectiveness of the Colorado Department of Agriculture 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,

Marguerite Salazar
Executive Director





COLORADO

Department of Regulatory Agencies

Colorado Office of Policy, Research &
Regulatory Reform

2018 Sunset Review Pet Animal Care and Facilities Act

SUMMARY

What is regulated?

The Pet Animal Care and Facilities Act (PACFA) requires any facility used to keep pet animals for the purpose of adoption, breeding, boarding, grooming, handling, selling, sheltering, trading or otherwise transferring such animals to obtain a license from the Commissioner of Agriculture (Commissioner). Pet animals include dogs, cats, rabbits, guinea pigs, hamsters, mice, rats, gerbils, ferrets, birds, fish, reptiles, amphibians and invertebrates.

Why is it regulated?

For many people, pet animals are members of the family. Ensuring that the facilities where pet animals are bred, housed, and groomed meet spatial and sanitary standards helps protect pet animals' health. Additionally, enforcement of PACFA can help stop the spread of zoonotic diseases. Zoonotic diseases are those that may be transmitted from animals to humans, such as rabies. Currently, an influx of animals from other states has precipitated an escalation in animal-carried diseases that may have an impact on human health.

Who is regulated?

In fiscal year 16-17, the Commissioner licensed 2,536 facilities, including:

129 Animal Rescues	2 Herptile Breeders
149 Animal Shelters	25 Small Animal Breeders
570 Boarding/Training facilities	1,154 Groomers
15 Bird Breeders	42 Pet Handlers
12 Cat Breeders	39 Pet Transporters
15 Large Scale Dog Breeders	64 Retail Aquariums
157 Small Scale Dog Breeders	158 Retail/Wholesale facilities

How is it regulated?

The Commissioner has delegated enforcement to the Inspection and Consumer Services Division of the Colorado Department of Agriculture (CDA). Staff licenses and inspects facilities before issuing a license, periodically after the license is issued, and whenever a concern or complaint regarding a facility arises.

What does it cost?

In fiscal year 16-17, the Commissioner expended \$894,414 and utilized 8.51 full-time equivalent employees on PACFA-related activities.

What disciplinary activity is there?

In fiscal year 16-17, the Commissioner took 362 total disciplinary actions, which included 8 criminal complaints and 19 cease and desist orders.

KEY RECOMMENDATIONS

Continue PACFA Act for 11 years, until 2030.

Pet animals can acquire many communicable ailments in communal settings. PACFA was adopted in 1994 and seeks to protect animal wellbeing through a program that licenses and inspects the facilities that breed, groom, train, board, rescue, shelter and sell pet animals. The protections that PACFA presents Colorado's pet animals and their adoptive families are clear: when the animals are attended to in licensed facilities, owners can be reasonably confident they were in a healthy environment. Without PACFA, animal welfare would principally fall under the jurisdiction of local law enforcement and animal cruelty laws, which is a far different, lesser, threshold of protection.

Authorize additional staff resources for the administration of PACFA.

There are multiple sunset criteria that direct analysis to consider resources dedicated to efficient program implementation by the agency under review. Currently, six inspectors and one investigator are responsible for PACFA enforcement of the more than 2,500 licenses issued. During fiscal year 16-17, not including pre-license inspections, staff conducted 1,101 annual routine inspections. Far more than half of the licensed facilities did not receive a routine inspection. The General Assembly established PACFA as a means of protecting pet animals. A program designed to license and inspect facilities must be able to inspect facilities prior to issuance of a license and on demand when there is an issue; it must also have the resources to investigate cases of unlicensed or unauthorized practice. Fulfilling those obligations demands staff resources.

METHODOLOGY

As part of this review, Colorado Office of Policy, Research and Regulatory Reform staff interviewed CDA staff and the staff of other executive agencies; interviewed officials with state and national professional associations; interviewed licensees and other stakeholders; reviewed records; reviewed federal statutes and rules, Colorado statutes and rules, and reviewed the laws of other states.

MAJOR CONTACTS MADE DURING THIS REVIEW

Animal Assistance Foundation
Colorado Citizens for Canine Welfare
Colorado Department of Agriculture
Colorado Department of Public Health and
Environment
Colorado Reptile Humane Society
Colorado State Veterinarian
Colorado Veterinary Medical Association

Colorado Voters for Animals
Citizens for Canine Welfare
Dumb Friends League
Office of the Colorado Attorney General
State Board of Veterinary Medicine
Two Are Better Than One
Veterinary Medical Association Executives

What is a Sunset Review?

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

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



Table of Contents

Background	1
Introduction.....	1
Types of Regulation.....	2
Licensure	2
Certification.....	3
Registration	3
Title Protection.....	3
Regulation of Businesses	4
Sunset Process.....	4
Methodology	5
Profile of the Profession	5
Legal Framework.....	7
History of Regulation	7
Legal Summary	7
State Regulation.....	8
Program Description and Administration.....	16
Licensing	17
Inspections and Complaints.....	20
Discipline	22
PACFA Advisory Committee.....	23
Colorado Pet Overpopulation Authority	23
Collateral Consequences - Criminal Convictions.....	24
Analysis and Recommendations.....	25
Recommendation 1 - Continue the Pet Animal Care and Facilities Act for 11 years, until 2030.....	25
Recommendation 2 - Authorize additional staff resources for the administration of PACFA.....	27
Recommendation 3 - Make it a PACFA offense to violate any statutes, rules, or regulations pertaining to animal health and fitness, promulgated by any local, state, and federal authority in which a facility is located.....	28
Recommendation 4 - Include in the grounds for discipline being convicted of, being fined for, or pleading guilty or no contest to any crime involving the theft, importation, capture, cruelty, neglect, or abuse of animals in any local, state, or federal jurisdiction.	29

Recommendation 5 - Require any principal, major shareholder, member, officer, director, or anyone else in a position to control a PACFA licensee to wait two years to apply for a new license after a previous license has been revoked or surrendered in lieu of discipline. 30

Recommendation 6 - Modify section 35-80-106.4(1), C.R.S., such that sterilization deposits go to the Colorado Pet Overpopulation Fund only and repeal the provision that allows an animal to be repossessed by a facility. 30

Recommendation 7 - Grant the Commissioner the authority to discipline or deny a license in cases when a licensee or applicant has pled “no contest” to animal cruelty. 31

Recommendation 8 - Direct that all money realized through fines be credited to the General Fund. 32

Administrative Recommendation 1 - The Commissioner should define what makes a grooming subcontractor a facility versus a professional license. 32

Background

Introduction

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

Sunset reviews are based on the following statutory criteria:

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

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

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

Types of Regulation

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

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

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

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

There are also several levels of regulation.

Licensure

Licensure is the most restrictive form of regulation, yet it provides the greatest level of public protection. Licensing programs typically involve the completion of a prescribed educational program (usually college level or higher) and the passage of an examination that is designed to measure a minimal level of competency. These types of programs usually entail title protection - only those individuals who are properly licensed may use a particular title(s) - and practice exclusivity - only those individuals

who are properly licensed may engage in the particular practice. While these requirements can be viewed as barriers to entry, they also afford the highest level of consumer protection in that they ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.

Certification

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

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

Registration

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

Title Protection

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

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

Regulation of Businesses

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

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

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

Sunset Process

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

The functions of the Commissioner of Agriculture (Commissioner) as enumerated in the Pet Animal Care and Facilities Act (PACFA), Article 80 of Title 35, Colorado Revised Statutes (C.R.S.), shall terminate on September 1, 2019, unless continued by the General Assembly. During the year prior to this date, it is the duty of COPRRR to conduct an analysis and evaluation of the PACFA pursuant to section 24-34-104, C.R.S.

The purpose of this review is to determine whether the currently prescribed regulation should be continued and to evaluate the performance of the Commissioner. During this review, the Colorado Department of Agriculture (CDA) staff must demonstrate that the program serves the public interest. COPRRR's findings and recommendations are submitted via this report to the Office of Legislative Legal Services.

Methodology

As part of this review, Colorado Office of Policy, Research and Regulatory Reform staff interviewed CDA staff and the staff of other executive agencies; interviewed officials with state and national professional associations; interviewed licensees and other stakeholders; reviewed records; reviewed federal statutes and rules, Colorado statutes and rules, and the laws of other states.

Profile of the Profession

In the U.S., pet ownership is extremely popular. According to a survey conducted by the American Pet Products Association, 68 percent of all U.S. households own at least one pet. This equates to 84.6 million households. While most of those households own dogs (48 percent) and/or cats (38 percent), a significant number own other species of animal(s).² During 2017, an estimated \$69.5 billion was spent on pets, including \$6.2 billion on pet services such as grooming and boarding.³

People treat their pets as members of their families. Owners can find comfort in their pets when they are ill or something bad happens. Often owners care for pets as if they were children and spoil them with pampering such as monthly trips to the groomer or even pet spas.⁴

PACFA regulates the facilities that provide pet services to pet owners. It authorizes licenses of 15 basic types of facilities that range from aquariums to shelters, including:

- Aquarium,
- Bird Band,
- Cat Breeder,
- Bird Breeder,
- Dog Breeder Large Scale Operation,
- Dog Breeder Small Scale Operation,
- Pet Animal Rescue,
- Pet Animal Shelter,
- Pet Boarding/Training,
- Pet Grooming,
- Pet Handler,
- Pet Retail/Wholesale,
- Pet Transporter,

² 2017-2018 National Pet Owners Survey Debut, American Pet Products Association, p.9. Retrieved September 18, 2018, from https://americanpetproducts.org/Uploads/MemServices/GPE2017_NPOS_Seminar.pdf

³ American Pet Product Association. *Pet Industry Market Size and Ownership Statistics*. Retrieved February 1, 2018, from http://www.americanpetproducts.org/press_industrytrends.asp

⁴ 1079thelink.com. *Our Pets Are More Spoiled than Ever*. Retrieved February 6, 2018, from <http://www.1079thelink.com/blogs/kelly-meyers/our-pets-are-more-spoiled-ever>

-
- Reptile/Amphibian (herptile) Breeder, and
 - Small Animal Breeder.

The purpose of PACFA is the protection of animals in pet care facilities throughout Colorado. The protection is achieved through the inspection of facilities and the enforcement of standards promulgated under PACFA.

Legal Framework

History of Regulation

Regulation of pet animal and psittacine bird dealerships was originally enacted in Colorado to protect humans from disease. The Department of Health (DOH), which is now the Department of Public Health and Environment, was initially given the responsibility for regulation.

In 1983, regulatory scope expanded to include boarding kennels, animal pounds, and shelters. The DOH established rules and regulations for the physical facility, sanitation, humane care, and method of operations. Under this program, enforcement actions were limited and a 1993 sunset review recommended that the licensing and inspection functions of the DOH sunset until a better mechanism could be devised.

During the 1994 legislative session, as a result of recommendations by an industry coalition task force, the Pet Animal Care and Facilities Act (PACFA) was passed into Colorado law under the jurisdiction of the Colorado Department of Agriculture (CDA). The law required that any person selling, transferring, adopting, breeding, boarding, training, grooming, sheltering or rescuing dogs, cats, birds, rabbits, ferrets, reptiles, or fish must possess a valid license.

The Pet Overpopulation Authority and Pet Overpopulation Fund were amended into PACFA in 2001. The primary duties of the Pet Overpopulation Authority are to underscore the importance of spaying and neutering and to act as fiduciary for the Pet Overpopulation Fund funded through an income tax check-off.

Among other recommendations, a 2008 sunset review recommended that PACFA develop written policies and guidelines for inspections, enforcement, and discipline.

As a result of the 2013 sunset review, it became a revocable offense for any principal, major shareholder, member, officer, director or anyone else in a position to control a licensee or applicant to be convicted of animal cruelty.

Also in 2013, the administration of PACFA was moved from the Animal Industry Division to the Inspection and Consumer Services Division of the CDA.

Legal Summary

FEDERAL REGULATION

The Animal Welfare Act, 7 U.S.C. 54, (AWA) was initially adopted in 1966 in response to the concern for dogs and cats used in research. The U.S. Secretary of Agriculture was directed to establish a program licensing dog and cat dealers, to register animal research facilities, and to create humane care provisions and a system of inspections.

The animals covered included live dogs, cats, monkeys, guinea pigs, hamsters, and rabbits. The original intent of the AWA was to set standards for how animals were obtained and maintained in a facility.⁵

The U.S. Department of Agriculture's Animal and Plant Health Inspection Service (APHIS) implements the AWA which establishes requirements

concerning the transportation, sale, and handling of certain animals and includes restrictions on the importation of live dogs for purposes of resale, prohibitions on animal fighting ventures, and provisions intended to prevent the theft of personal pets ... Facilities using regulated animals for regulated purposes must provide adequate housing, sanitation, nutrition, water, veterinary care, and protection from extreme weather and temperatures.⁶

APHIS inspectors conduct routine, unannounced inspections of facilities licensed or registered under the AWA to assess compliance. Inspectors use the AWA standards as the baseline by which they assess a facility's level of care. If a facility is out of compliance, it is held responsible and required to be brought into compliance.⁷

Over time, the AWA has been amended several times and currently includes provisions that govern the commercial use of many animals.

Specifically exempted from the AWA's licensing requirements are retail pet stores⁸ and anyone who does not buy animals for resale or who does not sell or exhibit animals.⁹

State Regulation

PACFA empowers Colorado's Commissioner of Agriculture (Commissioner) to issue licenses and promulgate rules as needed to implement it.¹⁰ PACFA defines pet animals as,

Dogs, cats, rabbits, guinea pigs, hamsters, mice, rats, gerbils, ferrets, birds, fish, reptiles, amphibians, and invertebrates, or any other species of wild or domestic or hybrid animal sold, transferred, or retained for the purpose of being kept as a household pet.¹¹

⁵ National Anti-Vivisection Society. *The Animal Welfare Act (AWA)*. Retrieved December 15, 2017, from https://www.navs.org/what-we-do/keep-you-informed/legal-arena/research/explanation-of-the-animal-welfare-act-awa/#.WjQO_0qnGUK

⁶ U.S.D.A. *Animal Welfare Act*. Retrieved December 15, 2017, from https://www.aphis.usda.gov/aphis/ourfocus/animalwelfare/SA_AWA

⁷ *Ibid.*

⁸ 9 C.F.R. § 2.1(a)(3)(i).

⁹ 9 C.F.R. §. 2.1(a)(3)(viii).

¹⁰ §§ 35-80-104 and 109, C.R.S.

¹¹ § 35-80-102(10), C.R.S.

Specifically excluded from this definition are working animals used on farms and ranches,¹² and livestock, which includes:¹³

- Cattle,
- Horses,
- Mules,
- Burros.
- Sheep,
- Poultry,
- Swine,
- Llamas,
- Goats, and
- Any other animal raised for food or fiber production.

Under PACFA, a pet animal facility is a location for keeping pet animals with the intention of, “adoption, breeding, boarding, grooming, handling, selling, sheltering, trading, or otherwise transferring such animals.”¹⁴

LICENSING

Any person who operates a pet animal facility in Colorado must possess a license issued under PACFA.¹⁵ There are several different license categories and each facility must have a separate license.¹⁶ The license categories include:¹⁷

- Retail and Wholesale Pet Animal Dealership;
- Temporary Retail Event;
- Dog Breeder Facility;
- Bird Breeder Facility;
- Cat Breeder Facility;
- Pet Grooming Facility;
- Pet Animal Boarding and/or Training Facility;
- Animal Rescue Facility;
- Animal Shelter;
- Reptile/Amphibian (herptile) Breeder Facility;
- Pet Animal Handler;
- Pet Animal Transporter; and
- Small Animal Breeder Facility.

¹² § 35-80-102(10), C.R.S.

¹³ §§ 35-80-102(10) and 102(9), C.R.S.

¹⁴ § 35-80-102(11), C.R.S.

¹⁵ § 35-80-104, C.R.S.

¹⁶ § 35-80-105(2), C.R.S.

¹⁷ 8 CCR § 1202-15-3.1. PACFA Rules

The licensing requirements of PACFA do not apply to:¹⁸

- Veterinary hospitals that board pet animals for the purpose of veterinary care;
- Any research facility, circus, or publicly or privately owned zoological park or petting zoo licensed under AWA;
- Any pet animal training facility where the pet animal owner or owner's designee is present during the duration of the animal's stay;
- Any kennel operated for the breeding, sale or racing of greyhounds that are not intended to be companion pets;
- Any wildlife regulated by the Colorado Department of Natural Resources;
- Livestock;
- Any owner, breeder, handler or trainer while transporting a pet animal to or from or exhibiting or competing at any event licensed, regulated or sanctioned by the American Kennel Club, United Kennel Club, or any other nationally recognized registering organization;
- Any wildlife sanctuary;
- Any location boarding no more than three pet animals at one time; and
- Any hobby breeder facility.

While each location of a pet animal facility must be separately licensed, two or more pet animal facilities that have the same or similar purpose and operate from one place are considered a single pet animal facility.¹⁹

License fees are established by the Commissioner by rule but cannot exceed \$700 per license.²⁰ Licenses expire annually on the first day of March.²¹

As specifically directed by statute, the Commissioner has promulgated rules pertaining to:²²

- Minimum standards of physical facility, sanitation, ventilation, heating, cooling, humidity, spatial and enclosure requirements, nutrition, humane care, medical treatment, sterilization of dogs and cats released from shelters and rescues and minimum holding periods;
- The minimum weight requirement for the transfer of cats;
- Maintenance of records concerning health care, euthanasia and transactions involving pet animals;
- The content of, and procedures for, any written recommendations and warnings concerning rabies vaccinations that the Commissioner may require a licensee to give in connection with the sale, transfer, trade, or adoption of a dog, cat, or ferret;

¹⁸ § 35-80-103(2), C.R.S.

¹⁹ § 35-80-102(11), C.R.S.

²⁰ § 35-80-105(4), C.R.S.

²¹ 8 CCR § 1202-15-3.7. PACFA Rules

²² § 35-80-109(2), C.R.S.,

-
- The establishment of qualifications for any applicant and standards of practice for any of the licenses authorized under PACFA, including the establishment of classifications and sub-classifications for any license authorized under PACFA;
 - The issuance of any license authorized under PACFA and the grounds for any disciplinary actions, including letters of admonition or the denial, restriction, suspension or revocation of any license; and
 - The amount of any license fee for a license based on the actual cost of administering and enforcing PACFA and the rules promulgated thereunder.

Many of these rules are specific to individual license types.

DISCIPLINE

The Commissioner may issue letters of admonition or deny, suspend, refuse to renew, restrict or revoke any license if the applicant or licensee has:²³

- Refused or failed to comply with any provision of PACFA or the rules promulgated thereunder;
- Been convicted of cruelty to animals;
- Had an equivalent license denied, revoked or suspended by any authority;
- Refused to provide the Commissioner with reasonable, complete and accurate information regarding the care of animals when requested by the Commissioner; or
- Falsified any information requested by the Commissioner.

Furthermore, the Commissioner must deny, refuse to renew, or revoke any license if the applicant, licensee, any principal, officer, director, manager, or other person who would have authority over the licensee or daily operations has been convicted of cruelty to animals and the underlying factual basis was found by the court to include the knowing or intentional torture or torment of an animal which needlessly injured, mutilated, or killed an animal.²⁴

INSPECTIONS

All facilities may be inspected upon application for licensure, a change to the physical facility or license category, and routinely once licensed.²⁵

The Commissioner may, either upon the Commissioner's own motion or upon the complaint of any person, conduct investigations to ensure compliance with PACFA.²⁶ At any reasonable time during regular business hours, the Commissioner has free and unimpeded access, upon consent or upon obtaining an administrative search warrant,

²³ § 35-80-112(1), C.R.S.

²⁴ § 35-80-112.5(2), C.R.S.

²⁵ 8 C.C.R. 1202-15-10.1.

²⁶ § 35-80-110(1), C.R.S.

to all areas where pet animals are kept, handled, or transported and to all required records.²⁷

While not subject to the routine inspection provisions of PACFA, pet animal facilities licensed by the U.S. Department of Agriculture as of December 31, 1993, are nevertheless subject to those PACFA requirements pertaining to licensure and investigations of reported violations.²⁸

UNLAWFUL ACTIVITIES

It is unlawful and a violation of PACFA for any person or entity to:²⁹

- Solicit, advertise, offer to perform, or perform any of the acts of a pet animal facility for which licensure is required without possessing a license;
- Refuse to comply with an order to cease and desist;
- Refuse or fail to comply with the provisions of PACFA, or any rules promulgated thereunder;
- Make a material misstatement in a license application or to the CDA staff during an official investigation;
- Impersonate any state, county, city and county, or municipal official or inspector;
- Aid or abet another in any violation of PACFA or any rule promulgated thereunder;
- Alter or falsify any certificate of veterinary inspection or any other certificate of veterinary health;
- Import or possess for the purpose of selling, trading, giving, or otherwise transferring any psittacine birds that have not been legally banded with a leg band;³⁰
- Sell, transfer, or adopt dogs or cats under the age of eight weeks, or guinea pigs, hamsters, or rabbits under the age of four weeks; or
- Sell, barter, exchange, or otherwise transfer, possess, import or cause to be imported into the state:
 - Any turtle with a carapace length of less than four inches, except a person may possess such a turtle that the person has bred; or
 - Any nonhuman primate.

²⁷ § 35-80-110(3), C.R.S.

²⁸ § 35-80-103(1), C.R.S.

²⁹ § 35-80-108(1), C.R.S.

³⁰ 8 CCR § 1202-15-19.7

Furthermore, it is unlawful and a violation of PACFA for any licensee to:³¹

- Refuse to permit entry or inspection pursuant to PACFA;
- Sell, offer for sale, barter, exchange, or otherwise transfer immature domestic fowl in lots of less than 25 as pets, or raccoons or other species of wildlife that are prohibited to be kept as pets by the Colorado Division of Parks and Wildlife;
- Import any pet animal for the purpose of sale, resale, trade, or barter by a pet animal facility unless such facility is properly licensed;
- Allow a license issued under PACFA to be used by an unlicensed person;
- Make any misrepresentation or false promise through advertisements, employees, agents or otherwise in connection with the business operations licensed pursuant to PACFA; or
- Fail to take reasonable care to release for sale, trade, or adoption only those pet animals that are free of undisclosed disease, injury, or abnormality.

The Commissioner may issue a cease and desist order whenever he or she has reasonable cause to believe that a violation of PACFA has occurred and immediate enforcement is deemed necessary. If a person fails to comply within 24 hours of its issuance, the Commissioner may seek a temporary restraining order and an injunction.³²

Any person who violates PACFA is subject to a civil penalty not to exceed \$1,000 per violation, following notice and an opportunity for a hearing.³³

All fees and fines are deposited in the Pet Animal Care and Facility Fund.³⁴

PACFA also contains provisions specific to certain types of facilities and certain types of pet animals.

In general, a shelter must hold an animal in its custody for five days before that animal can be offered for adoption or disposed of, so as to afford the owner of the animal an opportunity to reclaim the animal. However, a shelter may dispose of an animal after only three days if the animal has no identification and the shelter either lacks the resources to house the animal or the animal is dangerous.³⁵

With certain exceptions, shelters and rescues are prohibited from releasing dogs or cats to prospective owners unless the animal has been sterilized³⁶ or the prospective owner agrees to have the animal sterilized within 90 days and pays a deposit.³⁷

³¹ § 35-80-108(2), C.R.S.

³² § 35-80-111(2), C.R.S.

³³ §§ 35-80-113(1) and (2), C.R.S.

³⁴ § 35-80-116, C.R.S.

³⁵ § 35-80-106.3(1), C.R.S.

³⁶ §§ 35-80-106.4(1)(a) and 35-80-106.4(3), C.R.S.

³⁷ § 35-80-106.4(1)(b)(I), C.R.S.

The shelter or rescue must return the deposit to the owner upon receiving a written statement from the veterinarian who performed the sterilization procedure.³⁸ If the owner fails to have the animal sterilized, the shelter or rescue must forward the deposit to either the Pet Overpopulation Fund, which is discussed below, or a local dedicated spay and neuter fund. Additionally, the shelter or rescue may reclaim the animal.³⁹

ADVISORY COMMITTEE

The 17-member, Commissioner-appointed Pet Animal Advisory Committee (Advisory Committee) was created to advise the Commissioner in establishing rules and to provide ongoing review of PACFA. Advisory Committee members who receive no compensation or reimbursements are appointed as follows:⁴⁰

- One to represent animal rescues;
- One to represent bird breeders;
- One to represent small scale dog breeders;
- One to represent large scale dog breeders;
- One to represent cat breeders;
- One to represent small animal breeders;
- One to represent boarding kennels;
- One to represent the dog day care industry;
- One to represent pet groomers;
- One to represent pet animal retailers;
- One to represent pet animal wholesalers;
- One to represent animal control officers;
- One to represent animal shelters;
- One Colorado-licensed veterinarian; and
- Three members of the general public, none of whom shall represent or have a financial interest in any of the groups listed above.

PET OVERPOPULATION AUTHORITY AND FUND

PACFA also contains provisions that address pet overpopulation in the state. The Colorado Pet Overpopulation Authority (Authority) is created as a political subdivision of the State.⁴¹ The Authority's board of directors (Board) is appointed by the Commissioner and consists of:⁴²

- One representative of the Animal Assistance Foundation, or its successor organization;

³⁸ § 35-80-106.4(1)(b)(II), C.R.S.

³⁹ § 35-80-106.4(1)(b)(III), C.R.S.

⁴⁰ § 35-80-115(1), C.R.S.

⁴¹ § 35-80-116.5(1), C.R.S.

⁴² § 35-80-116.5(2), C.R.S.

-
- One representative of the Colorado Federation of Animal Welfare Agencies, or its successor organization;
 - One representative of a state veterinary medical association;
 - One representative of an association organized for Colorado animal control officers;
 - One representative from the CDA;
 - One member of an animal rescue organization;
 - One member of the general public with an interest in animal welfare; and
 - One representative of western Colorado.

The Board is authorized to:⁴³

- Adopt an education program concerning pet overpopulation with an emphasis on the importance of spaying and neutering to control pet overpopulation;
- Develop, adopt, and implement a process to fund and expend money for the activities and responsibilities of the Board;
- Accept gifts, grants, and donations, including personal services, for the activities and responsibilities of the Board; and
- Develop, adopt, and implement a cooperative process to work with local veterinarians, animal shelters, and local communities concerning animal sheltering and pet overpopulation control in the state.

In addition to any gifts, grants and donations the Board receives, the Pet Overpopulation Fund (CPOF) receives money from two primary sources. For income tax years 2010 through 2019, Colorado income tax filers may make voluntary contributions by so indicating on their Colorado income tax returns. Such funds are deposited in the CPOF.⁴⁴ Additionally, Coloradans may purchase special Adopt-a-Shelter-Pet license plates for their cars, with the extra monies going into CPOF's Adopt-a-Shelter-Pet Account.⁴⁵

The Board is tasked with spending the money in the CPOF to support spay and neuter efforts in those areas of the state that have an insufficient number of pet animal veterinary resources to meet local needs.⁴⁶ Money in the CPOF Adopt-a-Shelter-Pet Account may additionally be used to support other medical costs in pet animal shelters and rescues or to support pet animal overpopulation education programs.⁴⁷

⁴³ § 35-80-116.5(4), C.R.S.

⁴⁴ §§ 35-80-116.5(5)(a) and 39-22-2201, C.R.S.

⁴⁵ §§ 35-80-116.5 (5)(d) and 42-3-234, C.R.S.

⁴⁶ § 35-80-116.5(5)(c), C.R.S.

⁴⁷ § 35-80-116.5(5)(e), C.R.S.

Program Description and Administration

The Pet Animal Care and Facilities Act (PACFA) is administered by the Colorado Commissioner of Agriculture (Commissioner) through the Colorado Department of Agriculture's (CDA) Inspection and Consumer Services Division. Prior to fiscal year 14-15, PACFA was administered through the Office of the State Veterinarian in the Division of Animal Industries.

Table 1 illustrates the expenditures and the number of full-time equivalent (FTE) employees dedicated to administering PACFA during the period examined for this sunset review.

Table 1
Expenditures
Fiscal Years 12-13 through 16-17

Fiscal Year	Total Program Expenditure	FTE
12-13	\$598,259	5.87
13-14	\$681,754	6.12
14-15	\$792,776	7.28
15-16	\$737,292	7.29
16-17	\$804,414	8.51

Program expenditures and FTE increased during the period examined for this sunset review. The increases are due mainly to a proliferation in the number of active licensed facilities and an increase in enforcement activities forcing the CDA to add personnel.

Current FTE dedicated to the administration of PACFA is distributed as follows:

- 1.0 FTE Program Manager II: The PACFA Administrator administers the daily program operations and budget, monitors legislation and updates regulations, interacts with other state agencies, federal agencies, and similar agencies in other states.
- 1.0 FTE Compliance Specialist IV: The PACFA Lead Inspector trains inspectors, conducts inspections and complaint investigations, prepares reports, and recommends disciplinary actions when appropriate.
- 5.0 FTE Compliance Specialist III: PACFA Inspectors conduct facility inspections and complaint investigations on licensed/unlicensed facilities, prepare reports, and recommend disciplinary actions when appropriate.

- 1.0 FTE Compliance Specialist III: PACFA Investigator conducts complaint investigations into unlicensed operators/facilities, prepares reports, and issues cease and desist orders/criminal summons, when appropriate.
- 1.0 FTE Administrative Assistant III: This position provides administrative support by processing new and renewal applications, fulfilling Colorado Open Records Act requests, processing complaints, maintaining records, answering telephones, and responding to emails.

Licensing

Pet animal facilities must obtain a license from the Commissioner in order to operate in Colorado.

Table 2 illustrates the licensing activity under PACFA during the period examined for this sunset review.

**Table 2
Licensing Information**

Fiscal Year	Number of Licenses	
	Closed	Active
12-13	850	1,531
13-14	744	1,676
14-15	547	1,836
15-16	358	2,060
16-17	76	2,460

Licenses issued under PACFA are valid from March 1 through the last day of February each year. The column titled “Closed” in Table 2 reflects those licenses that were active for part of the indicated fiscal year and which failed to renew during that fiscal year. Tables 2 and 3 indicate that though the total number of licenses remained fairly steady, the number of active licenses increased 60.7 percent during the period examined for this sunset review.

There are several categories of licenses issued under PACFA. Table 3 enumerates the licenses issued by category, for the period examined for this sunset review.

**Table 3
Licenses by Category
Fiscal Years 12-13 through 16-17**

License by Category	FY 12-13	FY 13-14	FY 14-15	FY 15-16	FY 16-17
Animal Rescue	125	122	123	123	129
Animal Shelter	162	157	155	157	149
Boarding/Training	534	541	547	563	570
Bird Breeder	17	17	17	15	15
Cat Breeder	7	8	9	12	12
Dog Breeder - Large Scale	26	22	25	21	15
Dog Breeder - Small Scale	161	153	143	147	157
Herptile Breeder	Not applicable	Not applicable	Not applicable	Not applicable	2
Small Animal Breeder	10	9	18	20	25
Grooming	1,027	1,074	1,086	1,104	1,154
Pet Handler	46	40	29	34	42
Pet Transporter	Not applicable	Not applicable	Not applicable	Not applicable	39
Retail Aquarium	87	88	63	65	64
Retail/Wholesale	182	189	168	157	158
Total	2,384	2,420	2,383	2,418	2,536

There are multiple things to note from Table 3. The number of licenses issued in each category has stayed mostly stable with a slight upward trend. Two license categories were added in fiscal year 16-17 – herptile breeders⁴⁸ and pet transporter – and the number of pet groomers far outnumber the other categories. This is due, in part, to the issuance of 160 independent contractor pet groomer licenses to people who do not have control of a brick and mortar facility.

Note that the number of large scale dog breeders has decreased since fiscal year 14-15. This may be due, in part, to efforts to increase adoption rates from rescues and shelters. Breeders transferring 25 or more puppies or more than two litters within a

⁴⁸ 8 CCR § 1202-15 1.9.13. PACFA Rules. Defines a herptile breeder as a firm, person, or corporation that is engaged in the operation of breeding and raising reptiles/amphibians (herptiles) and that produces or transfers more herptiles than the maximum number established by the Commissioner by rule for each particular species.

12-month period, must be licensed.⁴⁹ Breeders transferring 100 or more puppies must be licensed as large scale dog breeders.⁵⁰

Prior to applying for a license, an applicant is encouraged to submit to program staff the building plans for the proposed facility. This is to help ensure that the facility satisfies the requirements of PACFA, thereby forestalling the need for modifications later.

To obtain a pet animal facility license, an applicant must submit a completed application and the license fee and pass a pre-license inspection.

The license fees assessed for each license category as of fiscal year 17-18 were:⁵¹

- Aquarium: \$350
- Bird Band: \$17.50
- Cat Breeder: \$300
- Bird Breeder: \$200
- Dog Breeder Large Scale Operation: \$400
- Dog Breeder Small Scale Operation: \$350
- Pet Animal Rescue: \$225
- Pet Animal Shelter:
 - Small, 3,000 or fewer transfers per year: \$350
 - Large, more than 3,000 transfers per year: \$400
- Pet Boarding/Training: \$400
- Pet Grooming facility: \$320
 - Independent contractor pet groomer: \$320
 - Self-wash only grooming facility: \$320
- Pet Handler: \$175
- Pet Retail/Wholesale: \$400
- Pet Transporter: \$225
- Reptile/amphibian (herptile) breeder: \$225
- Small Animal Breeder: \$350
- License category fee for each additional category per application: \$50

The fee to renew is the same as for initial licensure. In addition to the renewal fee, shelters, rescues, transporters, and breeders must also submit an annual report. The report is a general accounting of the number of animals transferred by the licensee.⁵²

⁴⁹ 8 CCR § 1202-15 1.9.7. PACFA Rules.

⁵⁰ § 35-80-102(6.6), C.R.S.

⁵¹ 8 CCR § 1202-15-4.4 PACFA Rules

⁵² Colorado Department of Agriculture. *PACFA - Yearly Reporting Forms for 2017*. Retrieved March 8, 2018, from <https://www.colorado.gov/pacific/aginspection/pacfa-yearly-reporting-forms-2017>

Inspections and Complaints

PACFA conducts inspections of the physical facilities and of the records that are required to be kept by the licensees under PACFA. The specific items that are inspected vary by the type of facility but they generally include safety, sanitation, and other health-related systems as well as records concerning treatments, history, and incidents.

A 2015 performance audit conducted by the Office of the State Auditor found, among other issues, that the PACFA program failed to conduct routine inspections in a timely manner. Table 4 indicates that the number of inspections has increased significantly during the period examined for this sunset review.

Table 4
Inspections
Fiscal Years 12-13 through 16-17

Type of Inspection	FY 12-13	FY 13-14	FY 14-15	FY 15-16	FY 16-17
Routine	393	769	926	1,090	1,101
Pre-license	221	286	299	404	555
Re-inspection/Follow up	27	94	132	798	1,017
Complaint-based	69	91	71	145	324
Attempted	33	185	234	271	307
Total	743	1,425	1,662	2,708	3,304

Table 4 shows that routine inspections and complaint-based inspections have increased by a multiple of 2.8 and 4.7 respectively. However, re- or follow-up inspections have increased 37.7 times. This is a clear indication that inspections and compliance have become a PACFA priority since the performance audit. This change has not gone unnoticed among the licensed community. The reaction has ranged from relief, to claims of overzealous enforcement.

During a complaint-based inspection, inspectors investigate the allegations that prompted the complaint, but will often use the opportunity to include a routine facility inspection as well. Staff explained that while the pre-license and complaint-based inspections take priority, the goal is to inspect each facility annually. Table 3 shows that there was an annual average of more than 2,400 active PACFA licenses issued. The CDA has dedicated six full-time inspectors to the enforcement of PACFA. Those inspectors work approximately 250 days per year. It is not difficult to understand that it can be a challenge to perform all of the needed inspections and still investigate incoming complaints.

Complaints are received from several sources and they concern both licensed and unlicensed facilities. Issues concerning the welfare of animals take top priority. Table 5 indicates the complaint-based investigations conducted during the fiscal years indicated. The term “Enforcement Action” is actually the reporting mechanism used to record all the actions taken during the investigation process and can include information from both formal complaints and inspector/investigator initiated activity, such as the issuance of a civil fine for violations of the Act or rule. The term “Prospect” is an investigation of what appears to be an unlicensed facility without a formal complaint or other prior information.

The allegations within the complaints can range from minor to major violations of PACFA. The program receives complaints concerning particularly abhorrent allegations regarding the health, safety, and death of pet animals. Investigations into these complaints require significant staff resources. In addition to its own investigations, the CDA staff works with animal control officers, and other local law enforcement on numerous cases.

Investigations into some of the more egregious cases may present a considerable degree of danger for staff. Often, investigations are conducted on private property in remote areas of Colorado. In those cases, inspectors wear protective gear, document the inspection on video, and may conduct the inspection with another inspector or with local law enforcement.

Table 5
Investigations
Fiscal Years 12-13 through 16-17

	FY 12-13	FY 13-14	FY 14-15	FY 15-16	FY 16-17
Enforcement Actions and Complaint Investigations (Licensed/Unlicensed)	369	278	222	609	726
Prospects (Non-Complaint Based)	98	115	202	167	103
Total	467	393	424	776	829

Table 5 indicates that the number of investigations increased dramatically, 78 percent, during the period examined for this sunset review. The increase was fueled by the complaint-based investigations.

Discipline

Table 6 shows the type of action taken for violations of PACFA during the period examined.

**Table 6
Disciplinary Actions
Fiscal Years 12-13 through 16-17**

Disciplinary Action	FY 12-13	FY 13-14	FY 14-15	FY 15-16	FY 16-17
Revocation / Surrender / Voluntary Relinquishment	0	0	1	0	0
Cease and Desist Order	11	9	12	17	19
Injunctive Relief/Contempt of Court	0	2	3	1	2
License Denied	4	2	2	5	5
Criminal Summons and Complaint	0	0	0	2	8
Civil Fines and Late Fees	311	258	203	384	234
Administrative Search Warrant	0	0	4	7	6
Failed Inspection	48	53	28	183	89
Total	374	324	253	599	362

“Criminal Summons and Complaint” actions are taken against unlicensed facilities or operators that perform, advertise, solicit or offer to perform the services of a pet animal facility without a valid license and/or that refuse to comply with a cease and desist order.

The 2015 performance audit found that PACFA did not “regularly and consistently” impose penalties for violations. The Colorado Office of Policy, Research, and Regulatory Reform has noted in other sunset reviews that the regulatory culture of the CDA is one of encouraging compliance with the law rather than a command and control approach to implementation and enforcement. Nonetheless, the data indicate that enforcement has increased during the period examined for this sunset review. Most significantly, the number of failed inspections and civil fines increased after issuance of the State Auditor’s report and then dropped back down. The presumption is that the facilities that were out of compliance fixed the issues and remained in compliance. However, another explanation is that the CDA has implemented online licensing which resulted in a significant drop in the number of late fees assessed.

PACFA Advisory Committee

PACFA creates a 17-member advisory committee that is appointed by the Commissioner. Its main purpose is to advise the Commissioner when establishing rules. The advisory committee also provides the CDA staff with an awareness about the general demeanor of PACFA implementation. It meets biannually. The most recent meeting was held April 20, 2018. The committee is comprised of:⁵³

- One person who represents animal rescue;
- One person who represents bird breeders;
- One person who represents small scale operation dog breeders;
- One person who represents cat breeders;
- One person who represents small animal breeders;
- One person who represents boarding kennel;
- One person who represents the dog day care industry;
- One person who represents pet groomers;
- One person who represents pet animal retailers;
- One person who represents pet animal wholesalers;
- One person who represents animal control officers;
- One person who represents animal shelters;
- One Colorado-licensed veterinarian;
- One person who represents large scale operation dog breeders; and
- Three members of the general public, none of whom can represent or have a financial interest in any of the groups listed above.

Colorado Pet Overpopulation Authority

Within PACFA is created the Colorado Pet Overpopulation Authority. The Authority's board of directors' (Board) directives include working with communities, veterinarians, facilities, and the public educating Coloradans about pet overpopulation, and awarding grants to local organizations that spay and neuter pet animals from the Colorado Pet Overpopulation Fund. The Board's members serve three-year terms and consist of:

- One representative of the Animals Assistance Foundation or its successor organization,
- One representative of the Colorado Federation of Animal Welfare Agencies or its successor organization,
- One representative of a state veterinary medical association,
- One representative of an association organized for Colorado animal control officers,
- One representative from the CDA,

⁵³§ 35-80-115(1), C.R.S.

- One member from an animal rescue organization,
- One member of the general public with an interest in animal welfare, and
- One representative of western Colorado.

The Pet Overpopulation Fund (CPOF) receives money from a state income tax checkoff, special Adopt-a-Shelter-Pet license plates, and from gifts, grants, and donations. The CPOF money supports spay and neuter efforts in areas that do not have the resources to meet local needs.

Table 7 shows the revenue generated by the various CPOF sources and the amounts of grant money expended during the period analyzed for this sunset review

Table 7
CPOF Revenues and Grants
Fiscal Years 12-13 through 16-17

Fiscal Year	License Plate Revenue	Taxpayer Checkoff Revenue	Miscellaneous Revenue	Total	Grants Awarded
12-13	\$168,136	\$134,627	\$5,810	\$308,573	\$265,474
13-14	\$253,676	\$141,898	\$3,300	\$398,874	\$346,954
14-15	\$274,964	\$104,300	\$3,220	\$382,484	\$413,248
15-16	\$322,370	\$180,999	\$2,300	\$505,669	\$404,619
16-17	\$370,881	\$150,435	\$3,435	\$524,751	\$495,079

Table 7 shows that revenue from the special license plates has increased every year and revenue from the income tax checkoff varied quite a bit during the period under review. The grants awarded increased \$229,605 or 87 percent during the period under review.

Collateral Consequences – Criminal Convictions

Section 24-34-104(6)(b)(IX), C.R.S., requires the Colorado Office of Policy, Research and Regulatory Reform to determine whether the agency under review, through its licensing processes, imposes any disqualifications on applicants or registrants based on past criminal history, and if so, whether the disqualifications serve public safety or commercial or consumer protection interests.

The Commissioner has the ability to deny, suspend, refuse to renew, restrict, or revoke any license based on convictions of animal fighting or animal cruelty.⁵⁴ The CDA staff reported that, based on those provisions, one license was denied in fiscal year 15-16 and three licenses were denied in fiscal year 16-17. Additionally, the CDA sought injunctive relief in one case in fiscal year 16-17.

⁵⁴ §§ 35-80-112(1)(b), and 112.5, C.R.S.

Analysis and Recommendations

Recommendation 1 – Continue the Pet Animal Care and Facilities Act for 11 years, until 2030.

Colorado's Pet Animal Care and Facilities Act (PACFA) is created in Article 80 of Title 35 Colorado Revised Statutes (C.R.S.). The administration of PACFA is housed in the Inspection and Consumer Services Division of the Colorado Department of Agriculture (CDA). PACFA was adopted in 1994 and seeks to protect animal wellbeing through a program that licenses and inspects the facilities that breed, groom, train, board, rescue, shelter and sell pet animals. PACFA defines a pet animal as:

[D]ogs, cats, rabbits, guinea pigs, hamsters, mice, rats, gerbils, ferrets, birds, fish, reptiles, amphibians, and invertebrates, or any other species of wild or domestic or hybrid animal sold, transferred, or retained for the purpose of being kept as a household pet, except livestock, ... "Pet animal" does not include an animal that is used for working purposes on a farm or ranch.⁵⁵

Depending on the type of facility that is licensed, there are different standards and requirements to which the program staff adheres and prioritizes. For example, a doggie daycare facility has different requirements than a retail pet store, or a pet groomer. However, even the requirements that the facilities have in common carry different weights based on the type of facility. The variations in licenses and species require the CDA inspectors to have a wide base of knowledge including familiarity with PACFA, the species of pet animal, and the specific type of business, among other interactive and implementation skills. In one facility the inspector may have to check enclosure sizes, which means he or she must have an idea of spatial measurements to understand what the minimums are merely by sight. In another facility, he or she may have to concentrate on animal feeding, or the facility's general environment. The point is, the PACFA program has promulgated a plethora of varied standards and each inspector must have a grasp of each standard as it applies to each specific facility.

Pet animals can acquire many communicable ailments in communal settings, the instances of some diseases such as canine parvovirus and heartworm is on the rise because Colorado has been the recipient of thousands of pet animals from other parts of the country over the last few years. The CDA works with other agencies in an attempt to reduce the impact of such problems by enforcing standards.

When violations are noted during inspections, the facility owners are typically given a chance to rectify the problems. Notwithstanding, if a licensee fails to make the needed change(s) or continually violates the terms of its license, discipline is imposed.

⁵⁵ § 35-80-102(10), C.R.S.

Though there are only six inspectors and one investigator for more than 2,500 licensed facilities⁵⁶ staff endeavors to conduct pre-license inspections, annual routine inspections, complaint-based inspections, and follow-up inspections.

The basic question that a sunset review is expected to answer is: is the program under review necessary to protect the public health, safety, and welfare?

As noted in the Profile section of this sunset report, 68 percent of all U.S. households own at least one pet.⁵⁷ During 2017, an estimated \$69.5 billion was spent on pets, including \$6.2 billion on pet services such as grooming and boarding.⁵⁸ These numbers indicate that pet animals are an extremely important matter of public interest. A program such as PACFA which, based on the number above, could protect more than two-thirds of Colorado's families from harm, is indeed necessary.

Despite an obvious need to protect the public, PACFA is not without controversy. There are wide spectrums of opinion about the program among interested stakeholders. On one side there are people that believe the CDA's resources dedicated to PACFA implementation are spread too thin and want to see greater and stricter enforcement. On the other side of that spectrum are those that feel enforcement is too draconian, that the inspectors hold personal vendettas, and enforcement should be dialed back. Another dichotomy is between animal rights groups and those who look at pet animals as merely a way to make a living. The differing sides in these discussions actually cause greater demand for the CDA's resources. The CDA staff reported to the Colorado Office of Policy, Research, and Regulatory Reform (COPRRR) that it receives approximately 500 Colorado Open Records Act (CORA) requests per year. This is an extremely large number of requests for a single program to fulfill. The high number also illustrates that there are many people interested in the program's actions.

Additionally, in a 2015 audit, the Office of the State Auditor found among other things, that the CDA's inspection protocols and follow-through were lacking. It is easy to infer that those issues can be caused by a lack of resources based on the number of facilities compared to the number of inspectors.

It should also be noted that continuing PACFA will also continue the Colorado Pet Overpopulation Authority, the Pet Overpopulation Fund, and the Pet Animal advisory committee. All of which are important elements of animal protection.

⁵⁶ In fiscal year 16-17, PACFA licensed 2536 total facilities.

⁵⁷ *2017-2018 National Pet Owners Survey Debut*, American Pet Products Association, p.9. Retrieved February 1, 2018, from https://americanpetproducts.org/Uploads/MemServices/GPE2017_NPOS_Seminar.pdf

⁵⁸ American Pet Product Association. *Pet Industry Market Size and Ownership Statistics*. Retrieved February 1, 2018, from http://www.americanpetproducts.org/press_industrytrends.asp

Despite the issues and controversies, the protections that PACFA presents Colorado's pet animals and their adoptive families are clear: when the animals are attended to by licensed facilities, owners can be reasonably confident they were served in a healthy environment. Without PACFA, animal welfare would principally fall under the jurisdiction of local law enforcement and animal cruelty laws, this is a far different, lesser threshold of protection.

For all of these reasons and because there is no reason to review this program sooner, the General Assembly should continue PACFA for 11 years, until 2030.

Recommendation 2 - Authorize additional staff resources for the administration of PACFA.

There are multiple sunset criteria that direct analysis to consider resources dedicated to efficient program implementation by the agency under review: criterion three asks whether the agency operation is impeded or enhanced by resource and personnel matters; criterion four asks if the agency performs its statutory duties efficiently and effectively; and criterion seven asks if complaint, investigation and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest.

During 2015, the Office of the State Auditor conducted a performance audit of the CDA's implementation of PACFA. Among the findings were that the CDA did not conduct inspections in a timely manner. Staff performance and the number of inspections has improved significantly since that time. The total number of inspections increased 4.5 times from fiscal year 12-13 to 16-17. However, there is still substantial room for improvement.

Recommendation 1 of this sunset report pointed out that there are six PACFA inspectors and one investigator for more than 2,500 licenses issued. During fiscal year 16-17, not including pre-license inspections, staff conducted 1,101 annual routine inspections. This means that more than half, 56.6 percent, of the facilities did not receive a routine inspection. Moreover, the number of enforcement actions and complaint-based investigations has doubled during the period examined for this sunset review. These numbers illustrate that the CDA human resources dedicated to PACFA implementation are stretched very thin. At minimum, the General Assembly should authorize an additional inspector and an investigator.

The General Assembly established PACFA as a means of protecting pet animals. A program designed to license and inspect facilities must be able to inspect facilities prior to issuance of a license and on demand when there is an issue, it must also have the resources to investigate cases of unlicensed or unauthorized practice. Recommendation 1 also noted that the CDA receives an extremely large number of CORA requests. Fulfilling those requests demands staff resources.

Because PACFA implementation is impeded by a lack of personnel, the lack of staff resources does not promote efficient implementation of statutory duties, and subsequently investigation and disciplinary procedures are not adequate to protect the public interest, the General Assembly should authorize additional staff resources for PACFA implementation.

Recommendation 3 - Make it a PACFA offense to violate any statutes, rules, or regulations pertaining to animal health and fitness, promulgated by any local, state, and federal authority in which a facility is located.

The first criterion that directs analysis in sunset reviews asks if conditions have changed that would require modification in regulation. Recommendation 1 mentioned that Colorado has become the destination for many animals from outside of the state. In 2012, Colorado accommodated 90,000 rescue dogs, 12,600 of those came from other states.⁵⁹ By 2016, the CDA reported that the numbers had increased to more than 104,000 dogs in rescues and nearly 30,000 of those came from out of state.⁶⁰

The import of animals of all species has precipitated an escalation in animal-carried diseases, including zoonotic diseases. Zoonotic diseases are those that may be transmitted from animals to humans, such as rabies. The CDA reports that rabies is on the rise.⁶¹ Moreover, heart-worm, a disease that can be deadly to several species of animals, was virtually nonexistent in Colorado but now has a strong presence because of an influx of animals from Gulf Coast states.

Recall from the “History of Regulation” section of this sunset report, that regulation of pet dealerships was begun to protect humans from disease. Today it is important to be more cautious because of the explosion in the pet population and the increases in the presence of disease. PACFA should protect both animals and humans.

The prevention and limiting of disease is the responsibility of governments at every level from local to national. Decisions are often made based on the local conditions and environments. It follows that a PACFA licensee should be required to follow all laws pertaining to animal health and fitness in the jurisdiction in which is located. A violation of those laws should be considered an actionable offense under PACFA section 35-80-112, C.R.S.

To be clear, the CDA staff allocated to PACFA implementation will not enforce these laws regarding animal health. However, when a licensee has been found in violation of the applicable laws in other jurisdictions, it should be a violation of PACFA.

⁵⁹ Fox Rothchild, Animal Law Update. *The Phenomenon Called “Retail Rescue.”* Retrieved August 15, 2018, from <https://animallaw.foxrothschild.com/2014/05/20/the-phenomenon-called-retail-rescue/>

⁶⁰ PACFA. *Summary of Animal Rescue and Shelter Statistics for 2016.* Retrieved September 12, 2018, from <https://www.colorado.gov/pacific/sites/default/files/2016%20Summary%20Stats.pdf>

⁶¹ CDA. *Rabies on the Rise.* Retrieved August 16, 2018, from <https://www.colorado.gov/pacific/aganimals/news/rabies-rise>

Because it is necessary to protect the health, safety, and welfare of both pet animals and humans, the General Assembly should make it a PACFA offense to violate any statutes, rules, or regulations, pertaining to animal health, and fitness, promulgated by the local, state, and federal authority in which a facility is located.

Recommendation 4 - Include in the grounds for discipline being convicted of, being fined for, or pleading guilty or no contest to any crime involving the theft, importation, capture, cruelty, neglect, or abuse of animals in any local, state, or federal jurisdiction.

PACFA empowers the Commissioner to implement PACFA by issuing licenses to qualified businesses and to discipline licensees that are out of compliance. Among the enumerated violations are a conviction for cruelty to animals⁶² and animal fighting.⁶³ It should also be a violation to have been found guilty, fined, or entered a plea of guilty or no contest in any local, state, or federal case pertaining to the theft, importation, capture, cruelty, neglect, or abuse of animals.

PACFA is a set of statutes that was adopted, in part, to protect the health, safety, and welfare of pet animals. The Commissioner should be able to consider the circumstances surrounding any violation, by any licensee or applicant, that may speak to the applicant's fitness and ability to protect the animals in its care. Cases and incidents pertaining to the theft, importation, capture, cruelty, neglect, or abuse of animals are relevant.

It is important to note that the Commissioner, "may issue letters of admonition or deny, suspend, refuse to renew, restrict, or revoke any license" for PACFA violations. The word "may" emphasizes that it is the job of the Commissioner to consider the applicant or licensee's entire record and make any disciplinary decisions based on actual circumstances. The Commissioner has discretion.

Consumers are under the impression that when a facility is a PACFA-licensed facility, the licensee has been fully vetted and all relevant issues are considered. The license creates a modicum of trust that a facility will be safe for a family pet.

Therefore, the General Assembly should authorize the Commissioner to discipline a licensee if it has been found guilty, fined, or entered pleas of no contest or guilty, in any local, state, or federal case pertaining to the theft, importation, capture, cruelty, neglect, or abuse of animals.

⁶² §§ 35-80-112(1)(b) and 112.5(2)(b), C.R.S.

⁶³ § 35-80-112.5(2)(a), C.R.S.

Recommendation 5 – Require any principal, major shareholder, member, officer, director, or anyone else in a position to control a PACFA licensee to wait two years to apply for a new license after a previous license has been revoked or surrendered in lieu of discipline.

Section 35-80-112(3), C.R.S., requires a two-year waiting period when a license has been revoked before a licensee may apply for a new license.

When there is a revocation due to animal cruelty the waiting period also applies to:

[A] principal, officer, director, manager, or any other person who has substantial control or authority over the daily operations of the entity, whether he or she applies individually or as a principal, officer, director, manager, or other person who has or would have substantial control or authority over the daily operations of the same or a different entity.

These same individuals should be required to wait two years regardless of the reason for a revocation.

The CDA staff reports that there are occasions when an individual or set of people who have had a license revoked will apply for a license as a different entity. If they meet the licensing prerequisites, then a license must be issued to the new entity. When this occurs, it diminishes the safeguards prescribed in PACFA and the value of the program itself.

Given the severity of the violations that result in revocation or surrender of a license, and the amount of time and resources it takes to process revocations and surrenders, two years is an appropriate waiting period for any of the people involved in facility operations to reapply for a PACFA license.

The General Assembly should require a two-year waiting period for any principal, major shareholder, member, officer, director or anyone else in a position to control such licensee after a PACFA license has been revoked or surrendered in lieu of discipline.

Recommendation 6 - Modify section 35-80-106.4(1), C.R.S., such that sterilization deposits go to the Colorado Pet Overpopulation Fund only and repeal the provision that allows an animal to be repossessed by a facility.

PACFA requires that animal shelters and rescues must either sterilize animals prior to release to a new owner or secure a written agreement with the new owner that he or she will have it sterilized. If an agreement is signed, the new owner must deposit a fee with the facility. If the owner fails to provide written verification that the sterilization was performed within 90 days, the facility must donate the deposit to the

Colorado Pet Overpopulation Fund (CPOF) or a local dedicated spay and neuter fund and the facility may reclaim the animal.

There are two problems with this section of PACFA. The first is that there is no definition of what constitutes a local spay and neuter fund. Staff believes that some of these funds have been sent to less than reputable organizations which may, or may not have used them for the intended purposes. The preferred solution is to require the deposit to be remitted to the CPOF. The main purpose of the CPOF is to make funds available to organizations that perform sterilization procedures. It thoroughly vets organizations that receive funds. Consequently, there will no longer be a problem with determining the legitimacy of a local organization.

The second issue is that the section has clawback language applicable when documentation of sterilization of the animal is not received. This section appears to allow the facility to forcibly repossess property without due process. That is not the case. Once ownership has transferred, the animal is the property of the new owner. A repossession of property is not something that can be determined without further legal proceedings.

For these reasons, the General Assembly should modify section 35-80-106.4(1), C.R.S., so that sterilization deposits go to the CPOF only and repeal the provision that allows an animal to be repossessed by a facility.

Recommendation 7 - Grant the Commissioner the authority to discipline or deny a license in cases when a licensee or applicant has pled “no contest” to animal cruelty.

If a person has been convicted of animal cruelty, he or she may be disciplined or denied a license under PACFA. This law should be expanded to cover those who plead no contest in animal cruelty proceedings.

A plea of no contest is not an admission of guilt. Still, such a plea has the same basic effect in a court. Many statutes that authorize regulation of a profession or industry have provisions that allow a regulator to consider whether a licensee or license applicant should be licensed after such a plea. To be clear, the Commissioner has discretion on whether to discipline or deny a license in such cases, it is not mandatory that discipline be imposed.

To protect the animals placed in pet care facilities, the General Assembly should grant the Commissioner the ability to decide to discipline or deny a license in cases when a licensee or applicant has pled “no contest to animal cruelty.”

Recommendation 8 - Direct that all money realized through fines be credited to the General Fund.

Section 35-80-116, C.R.S., provides that all fines collected pursuant to PACFA are credited to the Pet Animal Care and Facility Fund, which is the program's cash fund.

Typically, when an agency is given fining authority, funds generated by such fines are credited to the state's General Fund. The system is set in this manner so an enforcement agency has no incentive to impose fines other than taking legitimate disciplinary action. When fines are credited to the agency's cash fund, there can be a perceived conflict of interest that the agency is merely trying to increase revenue. Although COPRRR has no reason to believe that the Commissioner or the CDA staff has acted improperly, this recommendation is important as a policy matter to prevent any such allegations from gaining credibility. Therefore, the General Assembly should direct that all money realized through fines be credited to the General Fund.

Administrative Recommendation 1 – The Commissioner should define what makes a grooming subcontractor a facility versus a professional license.

The Commissioner licenses pet facilities under PACFA. The Commissioner has promulgated, by rule, a license type called an "Independent Contractor Pet Groomer" as a subset of the "Pet Groomer Facility" license.

It has been inferred by the name that the licensee is a person rather than a physical facility. In fact, some of those licensed in this category have had issues based on their employment status. The Colorado Department of Labor and Employment determined that some of the individuals licensed in this category were, in fact, employees rather than facilities or independent contractors.

To avoid these and similar issues, the Commissioner should develop and promulgate a list of physical requirements for independent contractor groomer facilities as it has for other license types.