



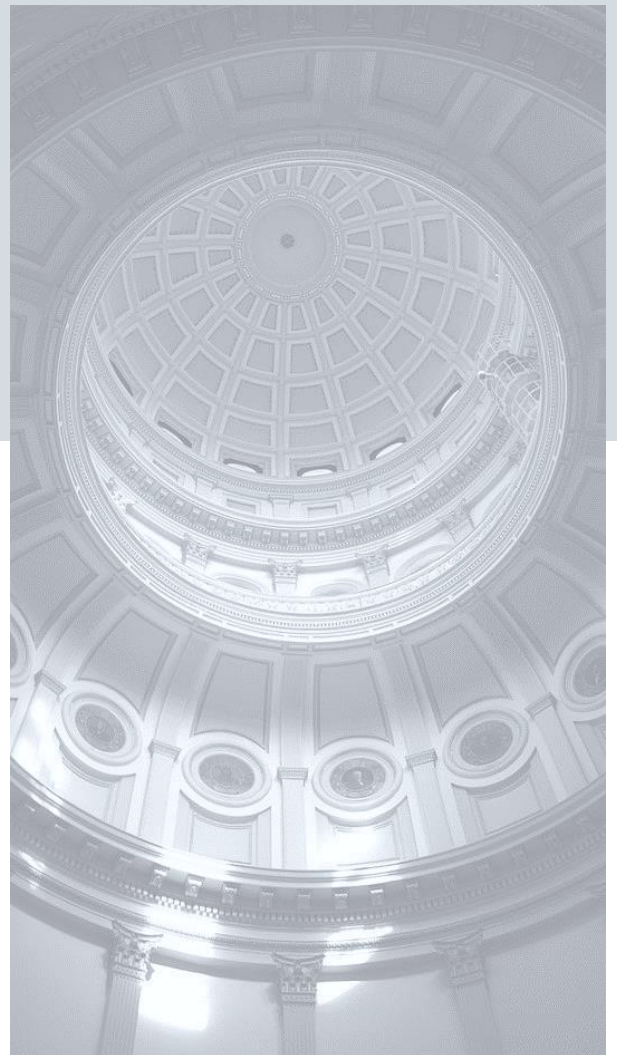
COLORADO

**Department of
Regulatory Agencies**

Colorado Office of Policy, Research &
Regulatory Reform

2019 Sunset Review

Fantasy Contests Act



October 15, 2019



COLORADO

**Department of
Regulatory Agencies**

Executive Director's Office

October 15, 2019

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

Dear Members of the General Assembly:

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

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

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

The Colorado Office of Policy, Research and Regulatory Reform (COPRRR), located within my office, is responsible for fulfilling these statutory mandates. Accordingly, COPRRR has completed the evaluation of the Fantasy Contests Act. I am pleased to submit this written report, which will be the basis for COPRRR's oral testimony before the 2020 legislative committee of reference.

The report discusses the question of whether there is a need for the regulation provided under Article 15.5 of Title 12, C.R.S. The report also discusses the effectiveness of the Director of the Division of Professions and Occupations in carrying out the intent of the statutes and makes recommendations for statutory changes in the event this regulatory program is continued by the General Assembly.

Sincerely,

Patty Salazar
Executive Director





COLORADO

Department of Regulatory Agencies

Colorado Office of Policy, Research &
Regulatory Reform

2019 Sunset Review Fantasy Contests Act

SUMMARY

What is regulated?

The Fantasy Contests Act (Act), administered by the Director of the Division of Professions and Occupations (Director and Division, respectively), provides regulatory oversight of registered and licensed fantasy contest operators. Small fantasy contest operators have no more than 7,500 contest players who have active accounts and pay entrance fees to participate in fantasy contests. Large fantasy contest operators have more than 7,500 contest players who have active accounts and pay entrance fees.

Why is it regulated?

The purpose of the Act is to protect consumers from financial harm. The Act requires small and large fantasy contest operators to maintain operating and contestants' funds separately. This requirement is important because comingling funds presents potential situations where fantasy contest operators could utilize funds for operating expenses for business, rather than prize payouts.

Who is regulated?

In fiscal year 17-18, there were 29 registered small fantasy contest operators and 2 licensed large fantasy contest operators.

How is it regulated?

Small fantasy contest operators are required to secure a registration from the Director prior to offering fantasy sports games to consumers. These fantasy contest sports operators are not required to pay a registration fee nor are they required to submit to annual audit requirements. Large fantasy contest operators must obtain a license from the Director prior to offering fantasy games to consumers and pay the annual licensing fee. Large fantasy contest operators are also required to annually submit independent audit results, which are completed by a third party, to the Director.

What does it cost?

In fiscal year 17-18, the total expenditures for the oversight of small and large fantasy contest operators were \$14,680, and there were 0.15 full-time equivalent employees associated with this regulatory oversight.

What disciplinary activity is there?

Since the inception of regulatory oversight in 2018, there has been zero discipline imposed on registrants or licensees.

KEY RECOMMENDATIONS

Continue the regulation of fantasy contest operators for seven years, until 2027.

The Act provides regulatory oversight for small and large fantasy contest operators. Regulatory oversight of small fantasy contest operators commenced in August 2016 and July 2018 for large fantasy contest operators, and there have been zero complaints or disciplinary actions imposed on registrants or licenses. However, the absence of regulating the fantasy contest industry presents the potential for financial harm to consumers. For example, the fantasy contest statute requires small and large fantasy operators to maintain operating and contestants' funds separately. Since the potential for financial harm to consumers who utilize fantasy contest operators exists should those funds be comingled, the General Assembly should continue the regulation of fantasy contest operators for seven years, until 2027. Doing so will ensure that consumers are adequately protected from unscrupulous actions of registrants and licensees.

Transfer regulatory authority of fantasy contest operators from the Director to the Department of Revenue, Division of Gaming pending the outcome of the November 2019 elections.

On May 14, 2018, the U.S. Supreme Court struck down a federal law that prohibited states from authorizing sports gambling. Not long after, the General Assembly passed House Bill 19-1327, which, among other things, authorized sports gambling in the state, provided the voters approve the collection of a tax on the net proceeds of sports betting at the November 2019 general election. Sports betting may only be conducted in Central City, Black Hawk and Cripple Creek and only if approved by the voters in each city in local elections to be held concurrently with the statewide election in November 2019.

If the measures to tax and ultimately approve sports betting gains approval by Colorado voters, the existing regulatory structure would require fantasy contest operators (which are very likely to participate in the sports gambling arena) to obtain a license from, and ultimately, to be regulated by two governmental departments - the Division and the Department of Revenue (DOR). Requiring licensees to obtain a license from two state agencies is overly restrictive for the industry and, therefore, the General Assembly should transfer regulatory oversight to DOR, pending the outcome of the election.

METHODOLOGY

As part of this review, Colorado Office of Policy, Research and Regulatory Reform staff interviewed stakeholders and Division staff, and reviewed Colorado statutes and rules, and the laws of other states.

MAJOR CONTACTS MADE DURING THIS REVIEW

Colorado Department of Revenue, Division of Gaming
Division of Professions and Occupations
DraftKings
Yahoo! Sports

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



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Background

Introduction

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

Sunset reviews are based on the following statutory criteria:

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

¹ Criteria may be found at § 24-34-104(6)(b), C.R.S.

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

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

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

These are but a few examples of how the various sections of a sunset report provide the information and, where appropriate, analysis required by the sunset criteria. Just

as not all criteria are applicable to every sunset review, not all criteria are specifically highlighted as they are applied throughout a sunset review.

Types of Regulation

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

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

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

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

There are also several levels of regulation.

Licensure

Licensure is the most restrictive form of regulation, yet it provides the greatest level of public protection. Licensing programs typically involve the completion of a prescribed educational program (usually college level or higher) and the passage of an examination that is designed to measure a minimal level of competency. These types of programs usually entail title protection - only those individuals who are properly licensed may use a particular title(s) - and practice exclusivity - only those individuals who are properly licensed may engage in the particular practice. While these requirements can be viewed as barriers to entry, they also afford the highest level of consumer protection in that they ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.

Certification

Certification programs offer a level of consumer protection similar to licensing programs, but the barriers to entry are generally lower. The required educational program may be 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 Director of the Division of Professions and Occupations (Director and Division, respectively) as enumerated in Article 15.5 of Title 12, Colorado Revised Statutes (C.R.S.)², shall terminate on September 1, 2020, unless continued by the General Assembly. During the year prior to this date, it is the duty of COPRRR to conduct an analysis and evaluation of the fantasy sports program pursuant to section 24-34-104, C.R.S.

The purpose of this review is to determine whether the currently prescribed regulation should be continued and to evaluate the performance of the Director. During this review, the Director 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.

² House Bill 19-1172 re-codified § 12-15.5-101, *et seq.*, C.R.S., and moved it to § 12-125-101, *et seq.*, C.R.S. In order to avoid confusion and erroneous citations and references, this sunset report consistently refers to the statutory provisions as if they remained in § 12-15.5-101, *et seq.*, C.R.S. A comparison table may be found in Appendix A.

Methodology

As part of this review, COPRRR staff interviewed stakeholders and Division staff, reviewed Colorado statutes and rules, and reviewed the laws of other states.

Profile of the Profession

In a sunset review, COPRRR is guided by the sunset criteria located in section 24-34-104(6)(b), C.R.S. The first criterion asks whether regulation by the agency is necessary to protect the public health, safety, and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less, or the same degree of regulation.

In order to understand the need for regulation, it is first necessary to understand what the industry does, how it works, who it serves and any necessary qualifications.

Fantasy contests are events where participants (contestants) choose real life players to form a “fantasy team” and compete against other contestants’ teams. In 2006, Congress passed the Unlawful Internet Gambling Enforcement Act, which specifies that fantasy sports contests are permitted under federal law because they are classified as a game of skill rather than a game of chance.³ A game of chance is one in which a player plays against the house, and a game of skill is one in which a player plays against other players.⁴ The State of Colorado regulates only those fantasy contests that require an entrance fee to be paid to a fantasy operator.

Many sports are utilized in fantasy sports contests, including but not limited to: football, baseball, hockey and basketball. The two most popular fantasy sports in the United States are football and baseball.⁵

There are a variety of types and durations of fantasy contests, and the scoring systems differ. Generally, a fantasy football team consists of nine players who are on an active National Football League (NFL) roster, regardless of the team. The fantasy players accrue points based on their performance while playing in an actual NFL game. Notably, when contestants choose a specific NFL defense, any player on the defense may score points based on a variety of factors, including plays such as interceptions or fumble recoveries. A fantasy football team may consist of the following:⁶

- One quarterback,
- Two running backs,

³ CNN. *Fantasy Sports: What is it, anyway?* Retrieved June 4, 2019, from <https://money.cnn.com/2015/10/06/news/companies/fantasy-sports-101/index.html>

⁴ All Games of Chance. *Games of Chance vs. Games of Skill*. Retrieved August 16, 2019, from <https://allgamesofchance.com/skill-or-chance-games.htm>

⁵ Encyclopedia Britannica. *Fantasy Sport*. Retrieved June 4, 2019, from <https://www.britannica.com/sports/fantasy-sport>

⁶ DraftKings. *Rules & Scoring*. Retrieved June 6, 2019, from <https://www.draftkings.com/help/rules/1/1>

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- Three wide receivers,
 - One tight end,
 - One flex player (running back, wide receiver or tight end), and
 - One NFL team defense.

Scoring for performance of NFL players also varies. The following are examples of offensive players' performance:⁷

- Passing touchdown = +4 points,
- 25 passing yards = +1 point (0.4 point per yard),
- More than 300 yards passing in a game = +3 points,
- Rushing touchdown = +6 points, and
- 10 receiving yards = +1 point (+0.1 point per yard).

The following are examples of situations where a defense may score points during an NFL game:⁸

- Interception = +2 points,
- Fumble recovery = +2 points,
- Interception return for a touchdown = +6 points, and
- Fumble recovery for a touchdown = +6 points.

Once all of the NFL players complete their games during the week, the fantasy team that accrues the most points from the performance of its NFL players is deemed the winner.

Depending on the duration of the league (some fantasy contests are a single week and some are an entire season), the winner will receive a monetary or prize payout.

⁷ DraftKings. Rules & Scoring. Retrieved June 6, 2019, from <https://www.draftkings.com/help/rules/1/1>

⁸ DraftKings. Rules & Scoring. Retrieved June 6, 2019, from <https://www.draftkings.com/help/rules/1/1>

Legal Framework

History of Regulation

In a sunset review, the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) is guided by the sunset criteria located in section 24-34-104(6)(b), Colorado Revised Statutes (C.R.S.). The first sunset criterion questions whether regulation by the agency is necessary to protect the public health, safety, and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less, or the same degree of regulation.

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

In 2016, the General Assembly passed House Bill 16-1404 (HB 1404), which required small and large fantasy contest operators to be regulated by the Director of the Division of Professions and Occupations (Director) within the Department of Regulatory Agencies.

Small fantasy contest operators have no more than 7,500 contest players; and large fantasy contest operators have more than 7,500 contest players.

Finally, effective October 1, 2019, the statutes governing fantasy contests were moved from section 12-15.5-101, *et seq.*, C.R.S., into section 12-125-101, *et seq.*, C.R.S., with the passage of House Bill 19-1172. Notwithstanding this recodification, in order to avoid confusion and erroneous citations and references, this sunset report consistently refers to statutory provisions as if they remained in section 12-15.5-101, *et seq.*, C.R.S. A comparison table may be found in Appendix A.

Legal Summary

The second and third sunset criteria question

Whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms, and whether agency rules enhance the public interest and are within the scope of legislative intent; and

Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures, and practices and any other circumstances, including budgetary, resource, and personnel matters.

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

Section 12-15.5-101, *et seq.*, C.R.S., provides regulatory oversight of registered fantasy contest operators and licensed fantasy contest operators.

Small fantasy contest operators have no more than 7,500 contest players who have active accounts and pay entrance fees to participate in fantasy contests. Large fantasy contest operators have more than 7,500 contest players who have active accounts and pay entrance fees.

Small fantasy contest operators are required to secure a registration from the Director prior to offering fantasy sports games to consumers. These fantasy contest sports operators are not required to pay a registration fee nor are they required to submit to annual audit requirements.

Applicants for registration must provide the following to the Director:⁹

- Completed application,
- Documentation validating the number of fantasy contest players in Colorado with active individual accounts who participate in fantasy contests with an entry fee (players cannot exceed 7,500), and
- Any other information required by the Director.

Large fantasy contest operators must obtain a license from the Director prior to offering fantasy games to consumers. They must pay the applicable licensing fee, which is currently \$25,000 annually.

Applicants for licensure must provide the following to the Director:¹⁰

- Completed application;
- Payment of applicable licensing fee;
- Attest to the validity of the information contained in the application;
- Submit a written oath or affirmation on the form;
- Submit detailed information about the nature and type of fantasy contests to the Director and the manner in which statistics are utilized, with examples of all information and materials to be provided to contestants;
- Submit the following information:
 - The name and address of the applicant;
 - If a partnership, the names and addresses of all of the partners, and if a corporation, association or other organization, the names and addresses of the president, vice president, secretary and managing officer,

⁹ 4 CCR 751-1 § 4(B), Office of Fantasy Contest Operator Licensing and Registration Rules.

¹⁰ 4 CCR 751-1 § 5(B), Office of Fantasy Contest Operator Licensing and Registration Rules.

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- together with all other information deemed necessary by the Director;
and
 - A designation of the responsible party who is the agent for the licensee for all communications with the Director.
 - Submit additional information as may be requested by the Director to evaluate the applicant's qualification for licensure.

Large fantasy contest operators, including the applicant, its officers, directors and general partners, must complete and pass a fingerprint-based criminal history background check.¹¹

Large fantasy contest operators are also required to annually submit independent audit results, which are completed by a third party, to the Director.¹²

Both small and large fantasy contest operators must implement commercially reasonable procedures for fantasy contests that are designed to:¹³

- Prevent employees of the fantasy contest operator and relatives living in the same household as employees, from competing in fantasy contests offered by the fantasy contest operator offering a cash prize;
- Prevent sharing of confidential information that could effect fantasy contest play with third parties until the information is made publically available;
- Verify that a fantasy contest player is 18 years of age or older;
- Ensure that individuals who participate in or officiate a game or contest that is the subject of such a fantasy contest are restricted from entering a fantasy contest that is determined, in whole or in part, on the accumulated statistical results of a team of individuals in a game or contest in which they are a player or official;
- Allow individuals to restrict themselves from entering a fantasy contest upon request;
- Disclose the number of entries that a fantasy contest player may submit for each fantasy contest and provide reasonable steps to prevent players from submitting more than the allowable number;
- Segregate fantasy contest player funds from operational funds and maintain a reserve in the form of cash, cash equivalents, an irrevocable letter of credit, a bond, or any combination, in the amount of the deposits made to the accounts of fantasy contest players for the benefit and protection of the funds held in their accounts;
- Distinguish highly experienced players from beginner players and ensure that highly experienced players are conspicuously identified as such to all players;
- Prohibit the use of scripts that give a player an unfair advantage over other players and make all authorized scripts available to all fantasy players;

¹¹ § 12-15-5-105(4), C.R.S.

¹² §§ 12-15.5-106(2) and 12-15-5-104(2)(a), C.R.S.

¹³ § 12-15.5-106(1), C.R.S.

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- Clearly and conspicuously disclose all rules that govern its fantasy contests; and
 - Use technologically reasonable measures to limit each fantasy contest player to one active account with each fantasy contest operator.

Additionally, all fantasy contest operators are required to maintain their daily records of operation for a minimum of three years.¹⁴

The Director is authorized to impose discipline on registered and licensed fantasy contest operators. Specifically, the Director may deny, suspend, revoke, place on probation, or issue a letter of admonition for registration or license violations of the statute or applicable rules.¹⁵

Small and large fantasy operators may also receive civil fines, which are limited to \$1,000 per violation, for violations of the statute.¹⁶ All fines must be credited to the General Fund.¹⁷

¹⁴ § 12-15.5-107, C.R.S.

¹⁵ § 12-15.5-109(1), C.R.S.

¹⁶ § 12-15.5-110, C.R.S.

¹⁷ § 12-15.5-110, C.R.S.

Program Description and Administration

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

Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures, and practices and any other circumstances, including budgetary, resource, and personnel matters;

Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively; and

Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates.

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

The Director of the Division of Professions and Occupations (Director and Division, respectively) within the Department of Regulatory Agencies regulates the two designations of fantasy contest operators: small, which are registered, and large, which are licensed. Small fantasy contest operators have 7,500 active player accounts or fewer. Large fantasy contest operators have more than 7,500 active accounts.

Regulatory oversight of the fantasy contest industry was enacted in August 2016 for registered small fantasy contest operators; large operators were required to obtain a license by July 1, 2018.

In fiscal year 18-19, the Division devoted 0.10 full-time equivalent (FTE) employees to provide regulatory oversight of the program. The FTE are as follows:

- Administrative Assistant III—0.05 FTE is responsible for, among other things, receiving complaints, case management, case summary preparation, and researching various cases concerning fantasy contest operators.
- Program Management II—0.05 FTE is responsible for the overall management of the fantasy contest operator program; including complaint resolution, stakeholder engagement, case summary review and application review and approval.

The aforementioned FTE do not include staffing in the centralized offices of the Division, which include the following:

- Director’s Office,
- Office of Investigations,
- Office of Expedited Settlement,
- Office of Examination Services, and
- Office of Licensing.

Table 1 highlights the total expenditures for the regulation of fantasy contest operators in fiscal years 16-17 through 17-18.

Table 1
Total Program Expenditures in Fiscal Years 13-14 through 17-18

Fiscal Year	Total Expenditures	FTE
16-17	\$7,346	0.15
17-18	\$14,680	0.15

Fiscal year 16-17 had comparatively low total expenditures because the regulation of fantasy contest operator was implemented mid-year.

Licensing and Registration

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

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

Small fantasy contest operators are required to secure a registration from the Director prior to offering fantasy sports contests to consumers. These fantasy contest operators are not required to pay a registration fee nor are they required to submit to annual audit requirements.

In order to obtain a small contest operator registration, an applicant must provide the following to the Director:¹⁸

- Completed application,

¹⁸ 4 CCR 751-1 § 4(B). Office of Fantasy Contest Operator Licensing and Registration Rules.

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- Documentation validating the number of fantasy contest players in Colorado with active individual accounts who participate in fantasy contests with an entry fee (players cannot exceed 7,500), and
 - Any other information required by the Director.

In fiscal year 18-19, there were 33 registered small fantasy contest operators, and in fiscal year 17-18, there were 29 registered small fantasy contest operators.

Large fantasy contest operators must obtain a license from the Director prior to offering fantasy sports contests to consumers. They must pay the applicable licensing fee, which is currently \$25,000 annually.

Applicants for licensure must provide the following to the Director:¹⁹

- Completed application;
- Payment of applicable licensing fee;
- Attest to the validity of the information contained in the application;
- Submit a written oath or affirmation on the form;
- Submit detailed information about the nature and type of fantasy contests to the Director and the manner in which statistics are utilized, with examples of all information and materials to be provided to contestants;
- Submit the following information:
 - The name and address of the applicant;
 - If a partnership, the names and addresses of all of the partners, and if a corporation, association or other organization, the names and addresses of the president, vice president, secretary and managing officer, together with all other information deemed necessary by the Director; and
 - A designation of the responsible party who is the agent for the licensee for all communications with the Director.
- Submit additional information as may be requested by the Director to evaluate the applicant's qualification for licensure.

In fiscal years 17-18 and 18-19, there were two licensed large fantasy contest operators.

Once an applicant obtains a license, they are required contract with a third party to conduct an audit annually and submit the results to the Director. In practice, licensees attest that they have complied with the requirement annually.

¹⁹ 4 CCR 751-1 § 5(B), Office of Fantasy Contest Operator Licensing and Registration Rules.

Complaint and Disciplinary Activity

The seventh sunset criterion requires COPRRR to examine 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.

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

Since regulatory oversight commenced in fiscal year 16-17, there have been zero complaints and disciplinary actions imposed on registrants and licensees.

Collateral Consequences - Criminal Convictions

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

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

Section 12-15.5-105(3)(a), C.R.S., authorizes the Director to deny or refuse to renew a fantasy contest operator's registration or license if the operator or any of its officers, directors or general partners has been convicted of or has entered a plea of *nolo contendere* or guilty to a felony.

In the past two fiscal years, the Director did not impose any sanctions or disqualifications on applicants, registrants or licensees based on past criminal history.

Analysis and Recommendations

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

Recommendation 1 - Continue the regulation of fantasy contest operators for seven years, until 2027.

There are two types of fantasy contest operators: small and large. Small fantasy contest operators have 7,500 contest players or fewer with active accounts who participate in fantasy contests with an entry fee. These operators are required to register with the Director of the Division of Professions and Occupations (Director) within the Department of Regulatory Agencies. The statute does not require small fantasy contest operators to pay a fee for registration, and they are not required to submit annual audits to the Director.

Large fantasy contest operators have more than 7,500 contest players with active accounts who participate in fantasy contests with an entrance fee. In order to offer services to consumers in Colorado, large fantasy contest operators are required to obtain a license from the Director. Also, large fantasy contest operators are required to complete an annual audit by a third party and provide the results to the Director.

An important aspect of regulation is the requirement that small and large fantasy contest operators maintain separate operating and contestant funds.

The first sunset criterion asks whether regulation is necessary to protect the public health, safety and welfare. Regulatory oversight of fantasy contest operators commenced on August 2016 for small fantasy contest operators and July 2018 for large fantasy contest operators, and there have been zero complaints or disciplinary actions imposed on registrants or licenses. However, the absence of regulating the fantasy contest industry presents the potential for financial harm to consumers. For example, the fantasy contest statute requires small and large fantasy operators to maintain operating and contestants' funds separately. This requirement is important because comingling funds presents potential situations where fantasy contest operators could utilize contestants' funds for operating expenses for the business. As such, comingling funds could result in the fantasy contest operator lacking the contestants' funds to ultimately pay monetary prizes to participants. Therefore, requiring fantasy contest operators to maintain separate funds for contestant funds and operating funds provides financial protection to consumers.

Regulatory oversight of small and large fantasy contest operators is relatively new in Colorado, and since its inception in 2016, there have been no complaints alleging

consumer harm, so there is insufficient data to analyze in this sunset report. However, because the potential for financial harm to consumers who utilize fantasy contest operators exists, the General Assembly should continue the regulation of fantasy contest operators for seven years, until 2027. Doing so will ensure that consumers are adequately protected from unscrupulous actions of registrants and licensees.

Recommendation 2 - Transfer regulatory authority of fantasy contest operators from the Director to the Department of Revenue, Division of Gaming pending the outcome of the November 2019 elections.

On May 14, 2018, the U.S. Supreme Court struck down the Professional and Amateur Sports Protection Act (Act), which was enacted in 1992. The Act prohibited states from authorizing sports gambling.²⁰ Specifically, in *Murphy v National Collegiate Athletic Association*, 138 S. Ct. 1461(2018), the U.S. Supreme Court held that the Act prohibiting states from sports betting violated the 10th amendment of the U.S. Constitution.²¹

Not long after, the Colorado General Assembly passed House Bill 19-1327, which decriminalizes sports betting with the following conditions:²²

- The collection of a tax on the net proceeds of sports betting must be approved by the registered electors of Colorado at the November 2019 general election;
- Sports betting will be regulated by the Department of Revenue, subject to supervision by the existing Limited Gaming Control Commission;
- A limited number of licenses will be issued. Persons or entities currently licensed to conduct limited gaming, (i.e., the owners of casinos in Central City, Black Hawk and Cripple Creek), are the only persons or entities eligible to hold a “master license” to conduct sports betting upon paying a license fee and submitting to background checks. A master license entitles the licensee to contract with a licensed “sports betting operator” or a licensed “internet sports betting operator”;
- The conduct of sports betting in Central City, Black Hawk and Cripple Creek is further conditioned on approval by the voters of each city in a local election to be held concurrently with the statewide election in November 2019; and
- The state will collect a tax of 10 percent on the net proceeds of sports betting activity to fund implementation of the state water plan and other public purposes. Of the total amount of tax collected, after first repaying the General Fund appropriation for startup and initial operating costs, six percent

²⁰ The New York Times. *Supreme Court Ruling Favors Sports Betting*. Retrieved June 17, 2019, from <https://www.nytimes.com/2018/05/14/us/politics/supreme-court-sports-betting-new-jersey.html>

²¹ Colorado General Assembly. *HB19-1327 Authorize and Tax Sports Betting Refer Under Taxpayers’ Bill of Rights*. Retrieved June 18, 2019, from <https://leg.colorado.gov/bills/hb19-1327>

²² Colorado General Assembly. *HB19-1327 Authorize and Tax Sports Betting Refer Under Taxpayers’ Bill of Rights*. Retrieved June 18, 2019, from <https://leg.colorado.gov/bills/hb19-1327>

is set aside annually to compensate the beneficiaries of revenues generated by limited gaming and other wagering activities for any losses attributable to competition from sports betting.

If Colorado voters approve the tax on net proceeds of sports betting, and, during the local elections in Central City, Black Hawk and Cripple Creek, approve sports betting, it is likely that large fantasy contest operators will seek to use their licenses as such, under the master license of a limited gaming casino owner in the aforementioned cities, to participate in sports betting operations.

Since large fantasy contest operators will likely participate in sports betting operations in Colorado, the General Assembly should transfer regulatory authority of both small and large fantasy contest operators from the Director to the Department of Revenue.

If the General Assembly continues regulatory oversight of fantasy contests, as recommended in the first recommendation in this sunset review, and the measures to tax and ultimately approve sports betting gain approval by Colorado voters in November 2019, the existing regulatory structure would require fantasy contest operators to obtain a license from, and ultimately, to be regulated by two governmental departments. This is inconsistent with the second sunset criterion, which asks whether the current regulation is the least restrictive form of regulation consistent with public protection. Requiring licensees to obtain a license from two state agencies is overly restrictive for the industry and, therefore, regulatory oversight should be housed in one state agency, the Department of Revenue.

Transferring regulatory oversight from the Director to the Department of Revenue will not compromise consumer protection; instead, it will provide a streamlined process where fantasy contest operators will be regulated by one governmental department rather than two.

Therefore, the General Assembly should transfer regulatory authority of fantasy contest operators from the Director to the Department of Revenue, Division of Gaming, pending the results of the November 2019 elections.

Recommendation 3 - Require small fantasy operators to complete annual audits by a third party and submit the results to the regulator.

Currently, section 12-15.5-106(2), Colorado Revised Statutes, require large fantasy contest operators to contract with a third party to annually perform an independent audit, and submit the results to the Director. The purpose of the audit, among other things, is to ensure that the large fantasy contest operator segregates fantasy contest play funds from operational funds. This requirement is consistent with the first sunset criterion, which asks whether regulation protects consumers.

The statute does not require small fantasy contest operators to have an annual audit performed. Although small fantasy contest operators often maintain smaller contest player funds, there is still a potential that unscrupulous actions may occur, such as comingling contestants' funds with operating funds. Doing so may present situations where fantasy contest operators utilize contestants' funds for operating expenses and are unable to pay monetary prizes to consumers.

In order to ensure that both small and large fantasy contest operators are acting in a financially responsible manner, and to provide regulatory protection to consumers, the General Assembly should require that small fantasy contest operators contract with a third party to annually perform an independent audit and submit the results to the regulator.

Doing so will ensure small fantasy contest operators are maintaining consumer funds appropriately and responsibly, thus ensuring that consumers are protected from financial harm.

Appendix A - Title 12 Recodification Table

This table shows provisions of Article 15.5 of Title 12 of the Colorado Revised Statutes that were relocated as a result of the passage of House Bill 19-1172, concerning an organizational recodification of Title 12.

Prior to October 1, 2019	October 1, 2019 and Thereafter	Prior to October 1, 2019	October 1, 2019 and Thereafter
12-15.5-101	12-125-101	12-15.5-105 IP(5)(a)	12-125-106 IP(5)(a)
12-15.5-102 IP	12-125-103 IP	12-15.5-105(5)(a)(I)	12-125-106(5)(a)(I)
12-15.5-102(1)	12-125-103(1)	12-15.5-105(5)(a)(II)	12-125-106(5)(a)(II)
12-15.5-102(2)	Repealed	12-15.5-105(5)(b)	12-125-106(5)(b)
12-15.5-102(3)	12-125-103(2)	12-15.5-106	12-125-107
12-15.5-102 IP(4)	12-125-103 IP(3)	12-15.5-106 IP(1)	12-125-107 IP(1)
12-15.5-102(4)(a)	12-125-103(3)(a)	12-15.5-106(1)(a)	12-125-107(1)(a)
12-15.5-102(4)(b)	12-125-103(3)(b)	12-15.5-106(1)(b)	12-125-107(1)(b)
12-15.5-102(4)(c)	12-125-103(3)(c)	12-15.5-106(1)(c)	12-125-107(1)(c)
12-15.5-102(5)	12-125-103(4)	12-15.5-106(1)(d)	12-125-107(1)(d)
12-15.5-102(6)	12-125-103(5)	12-15.5-106(1)(e)	12-125-107(1)(e)
12-15.5-102(7)	12-125-103(6)	12-15.5-106(1)(f)	12-125-107(1)(f)
12-15.5-103	12-125-104	12-15.5-106(1)(g)	12-125-107(1)(g)
12-15.5-103(1)	12-125-104(1)	12-15.5-106(1)(h)	12-125-107(1)(h)
12-15.5-103(2)	12-125-104(2)	12-15.5-106(1)(i)	12-125-107(1)(i)
12-15.5-104	12-125-105	12-15.5-106(1)(j)	12-125-107(1)(j)
12-15.5-104(1)	12-125-105(1)	12-15.5-106(1)(k)	12-125-107(1)(k)
12-15.5-104 IP(2)	12-125-105 IP(2)	12-15.5-106 IP(2)	12-125-107 IP(2)
12-15.5-104(2)(a)	12-125-105(2)(a)	12-15.5-106(2)(a)	12-125-107(2)(a)
12-15.5-104 IP(2)(b)	12-125-105 IP(2)(b)	12-15.5-106(2)(b)	12-125-107(2)(b)
12-15.5-104(2)(b)(I)	12-125-105(2)(b)(I)	12-15.5-107	12-125-108
12-15.5-104(2)(b)(II)	12-125-105(2)(b)(II)	12-15.5-108	12-125-109
12-15.5-105	12-125-106	12-15.5-108(1)	12-125-109(1)
12-15.5-105(1)	12-125-106(1)(a), (1)(b)	12-15.5-108(2)	12-125-109(2)
12-15.5-105 IP(2)	12-125-106 IP(2)	12-15.5-108(3)	12-125-109(3)
12-15.5-105(2)(a)	12-125-106(2)(a)	12-15.5-109	12-125-110
12-15.5-105(2)(b)	12-125-106(2)(b)	12-15.5-109 IP(1)	12-125-110 IP(1)
12-15.5-105 IP(2)(c)	12-125-106 IP(2)(c)	12-15.5-109(1)(a)	12-125-110(1)(a)
12-15.5-105(2)(c)(I)	12-125-106(2)(c)(I)	12-15.5-109(1)(b)	12-125-110(1)(b)
12-15.5-105(2)(c)(II)	12-125-106(2)(c)(II)	12-15.5-109(1)(c)	12-125-110(1)(c)
12-15.5-105(2)(c)(III)	12-125-106(2)(c)(III)	12-15.5-109(2)	12-125-110(2)
12-15.5-105(3)(a)	12-125-106(3)(a)	12-15.5-110	12-125-111
12-15.5-105(3)(b)	12-125-106(3)(b)	12-15.5-111	12-125-112
12-15.5-105(4)	12-125-106(4)	12-15.5-112	12-125-113
12-15.5-105 IP(5)	12-125-106 IP(5)		