

RIVER OUTFITTER LICENSING PROGRAM

**Submitted by the
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EXECUTIVE SUMMARY

The regulation of river outfitters was created in the State of Colorado under the Department of Natural Resources, Division of Parks and Outdoor Recreation on January 1, 1985. The Board of Parks and Outdoor Recreation was given the authority to promulgate regulations to govern the licensing of river outfitters. The Division of Parks and Outdoor Recreation was designated as the agency responsible for carrying out the laws which regulate licensed river outfitters. River outfitters are defined by Colorado statute to be essentially, entities who provide transportation, guide services or facilities for compensation for the purpose of river-running.

The Department of Regulatory Agencies has conducted this 1993 sunset review of the Licensing of River Outfitters. This sunset review concludes that continued regulation of river outfitting is necessary, given the necessity of ensuring professional competence and expertise and of maintaining minimum safety standards for equipment.

This report also finds that the existing regulatory program is administered well by the Division of Parks and Outdoor Recreation. Certain statutory changes are necessary to clarify the law and to allow for improved enforcement of the program. These changes include a clearer definition of the term "river outfitter" to include all entities that provide raft trips for compensation. The report recommends increasing the penalty for certain violations of the statute and strengthening the Division's authority to enforce the Act by clarifying grounds for discipline. In addition, this sunset review proposes increasing the penalty for unlicensed outfitter activity and authorizing the power to issue cease and desist orders.

I. THE SUNSET PROCESS

The regulation of river outfitters pursuant to article 32 of title 33, C.R.S. is scheduled to terminate on October 1, 1994 unless continued by the General Assembly. During the year prior to that date, it is the responsibility of the Department of Regulatory Agencies to conduct a sunset review and evaluation of that regulatory program.

During this review, the Division of Parks and Outdoor Recreation and the Board of Parks and Outdoor Recreation in the Department of Natural Resources must demonstrate that there is a need for the continued existence of the program and that the regulation it provides is the least restrictive consistent with the public interest. The Department of Regulatory Agencies' findings and recommendations are submitted via this report to the Joint Legislative Sunrise and Sunset Review Committee of the Colorado General Assembly. (Statutory criteria used in this sunset review may be found in Appendix A of this report).

The scope of this sunset review was comprehensive in nature. Registered outfitters were surveyed by the Department of Regulatory Agencies, Office of Policy and Research. Professional organizations, state and federal officials were interviewed. Staff of the Division of Parks and Recreation were interviewed as well. Regulation of river outfitters in other states was also reviewed.

II. BACKGROUND

HISTORICAL PERSPECTIVE

Compared to other adventure sports, like skiing and mountaineering, whitewater river sports are relatively new. Their history in the United States began just after World War II, when a small group of entrepreneurs began taking people down the Colorado River in rafts made from war-surplus bridge pontoons. The boom in river rafting began in the 1960's, when new rivers opened for recreation and exploration and when new designs, technology, and materials made possible the boats and inflatable rafts used today.

Before the formalized efforts in 1984 that would impose safety regulations on river outfitters, Colorado had no restrictions or standards which had to be met to become a river outfitter. There was no agency or entity that regulated the safety and quality of river outfitters on all rivers in the State of Colorado. The Division of Parks and Outdoor Recreation (DPOR) within the Department of Natural Resources had boating regulations that applied equally to private boaters and outfitters, including requirements for wearing life vests approved by the U.S. Coast Guard. However, DPOR had a staff of only two persons for the enforcement of the statewide program.

Different stretches of rivers in Colorado were under the control of different agencies. The U.S. Bureau of Land Management (BLM) issued permits on some rivers, but the agency's authority was limited in Colorado. Other stretches of river were under the control of the National Park Service (NPS), U.S. Forest Service (USFS) and county sheriffs in Colorado. The BLM and USFS had stated that they did not have the authority to control on-the-water recreational activity, only those that occurred on their lands.

As a result of this lack of control anyone with access to an inflatable raft could become a river outfitter in the state of Colorado, regardless of experience in river running or first aid.

In the early 1980's, several serious incidents and three deaths involving commercial passengers occurred in Colorado preceding the implementation of the river outfitter licensing program. Of the three deaths, two occurred on the Arkansas River in Chaffee County and one on the Colorado River in Eagle County. The investigation, conducted by the Division of Parks and Outdoor Recreation and the county sheriff, resulted in the filing of criminal charges against the outfitters involved in the deaths on the Arkansas River.

In 1983, over the Memorial Day weekend, the BLM reported that five passengers on the Upper Colorado River were hospitalized with hypothermia and apparently commercial companies were using inexperienced guides who had no experience on the river at high levels of stream flow. In addition, the DPOR logged five serious passenger complaints that year concerning outfitter carelessness, recklessness, negligence, and use of unsafe equipment.

For consistency of regulation and to maintain high standards, the Colorado River Outfitters Association (CROA), a trade organization formed in 1980 by Colorado commercial river outfitters, undertook a

formalized effort to implement a state licensing program. Though membership in CROA is voluntary, the industry efforts prior to licensing established minimum safety standards and contributed to the safety of the industry. The minimum requirements for commercial river outfitters outlined by CROA addressed liability insurance coverage; equipment criteria such as inflation of rafts, personal flotation devices, and first aid kits; guide qualifications; passenger orientation; fires; human waste; and sanitation. The huge growth in the Colorado rafting industry had caused the self-monitoring system, practiced by the majority of outfitters, to become difficult to enforce. The outfitters felt that in order to provide professional, quality river trips and to assure that the industry in Colorado met minimum safety standards, state regulation was necessary.

The members of CROA felt that they subscribed to high professional standards, but that other river outfitters in the state were tarnishing the public's perception of safety on the rivers. Subsequently, CROA worked diligently to establish a licensing program in the State of Colorado.

The River Outfitter Licensing Program was established by the Colorado Legislature in 1984. This program gave responsibility to the Colorado Board of Parks and Outdoor Recreation (Board) for regulating river outfitters. The Board of Parks and Outdoor Recreation resides in the Department of Natural Resources. The Board, with the consent of the Executive Director of the Department of Natural Resources, appoints the Director of the Division of Parks and Outdoor Recreation (33-10-103(1), C.R.S.).

This Board also regulates recreational trails, vessels, off-highway vehicles, snowmobiles, and natural areas. It promulgates rules, regulations and orders relating to parks and outdoor recreation programs; manages, develops and maintains all state parks and state recreation areas; and establishes parks and outdoor recreation uses for the areas, lakes, properties and facilities under its control.

The Board consists of five members appointed by the Governor. One member is appointed from the state at large and the remaining four members represent the north, south, west and metro regions of the State as defined in C.R.S. 33-10-105. The duties of the Board specific to the river outfitters licensing program include enacting rules and regulations necessary to govern the annual licensing of river outfitters, ensuring the safety of associated river running activities, and carrying out the licensing program.

In January and February 1985, the Board took official action to adopt the river outfitter licensing regulations. One hundred twenty-five licenses were issued to river outfitters in March 1985.

The Division of Parks and Outdoor Recreation (DPOR) was designated to be the agency that would provide regulatory oversight of licensed river outfitters in Colorado. River outfitters are statutorily defined as persons soliciting to provide or providing, for compensation, facilities, guide services, or transportation for the primary purpose of river-running. Guides are defined as individuals, including but not limited to subcontractors, employed for compensation by any river outfitter for the purpose of operating vessels. Professional guides are not required to be licensed in Colorado. However, the statutes provide for minimum qualifications of guides, trip leaders and guide instructors. The statute specifically exempts from the definition of "river outfitter" persons who rent motor vehicles, vessels, and other equipment to the public or who provide instruction for canoeing or kayaking skills.

The regulatory oversight program involves "parks and recreation officers", also known as "river rangers", making inspections of records and safety equipment, handling investigations of complaints and accidents, participating in search and rescue activities, and responding to questions from the public. C.R.S. 33-10-102(17), which defines "peace officer", includes parks and recreation officers in the definition.

The focus of this regulation is consumer safety. There is no provision to regulate the financial aspects of river outfitting. If a consumer is financially harmed by a river outfitter, he or she must pursue other options such as a civil lawsuit or exercise recourse to Colorado's consumer protection laws.

Recent Proposed Legislation Affecting River Outfitters

House Bill 92-1179, introduced and defeated during the 1992 legislative session, provided that river outfitters be immune from liability for injuries sustained as a result of the inherent danger and risk of river recreational activities. The bill also proposed that certain medical personnel who render emergency medical assistance at the site of an accident or emergency, caused in connection with a river recreational activity, should not be liable for any civil damages.

In addition, the bill proposed changing the minimum qualifications for guides, trip leaders, and guide instructors to require the possession of a valid cardiopulmonary resuscitation (CPR) card. The rules currently require guides to possess, at a minimum, a valid standard first-aid card and a valid cardiopulmonary resuscitation card issued by the American Red Cross or its equivalent.

The bill also proposed prohibiting any person from acting as a guide, trip leader, or guide instructor until at least three hundred fifty river rafting miles had been logged and the guide had participated in at least one trip on the river section on which the guiding or instructing would take place. The current statutory requirements exceed the bill's proposed amendments, because trip leaders are required to have logged a total of at least five hundred river miles as a qualified guide and guide instructors must have logged a total of at least fifteen (1500) river miles.

The idea for the bill was based on the passage of the Skier Safety Act. However, the Legislature believed that commercial passengers participating in river rafting place a certain level of trust in the river outfitting company they hire. The guide must be knowledgeable of the complexity of the river and must be able to evaluate the situation as it unfolds. As a commercial passenger, one should be guaranteed a certain standard of care. This is different than the sport of skiing where the individual skier must take control.

III. FEDERAL AND LOCAL REGULATION OF RIVER OUTFITTERS

Federal Regulation. River outfitters who operate on Federal lands are regulated by Federal agencies such as the United States National Park Service (NPS), the United States Forest Service (USFS), and the Federal Bureau of Land Management (BLM). The relationship between the federal government and river outfitters is largely a contractual agreement, whereby the federal government grants a permit to allow the river outfitters to use public land for commercial use. These federal agencies require that the river outfitter possess a state river outfitter license before a federal permit is granted. Highlights of federal regulation of river outfitters follow:

United States National Park Service. River outfitters are required to contract directly with the United States Park Service in order to provide guided river float trips for the public within Dinosaur National Monument (Green and Yampa Rivers). The Park Service requires the following conditions of the concessioner:

- * **watercraft appropriate to services provided;**
- * **serviceable Personal Flotation Devices (PFDs);**
- * **current American Red Cross First Aid and CPR card;**
- * **adequately trained river guides who meet all qualifications to conduct commercial river boat operations;**
- * **a fee representing three percent (3%) of the concessioner's gross receipts; and**
- * **liability insurance coverage based on degree of risk and number of passengers on board; varies from \$300,000 to \$500,000.**

The requirement for the certification of adequately trained and qualified river guides is contingent on the qualifications and standards of the Colorado regulatory program. The Park Service requirements differ from the state program, in that at least one guide on every trip must possess a current American Red Cross Advanced First Aid card.

United States Forest Service. The Forest Service administers permits for outfitters and guides operating on National Forest Service lands. Individuals and organizations conducting outfitting and guiding activities on these lands must have a Forest Service permit. The Forest Service issues permits for commercial outfitters and guides on the North Platte, Poudre, and Taylor Rivers in Colorado.

Outfitters are required to possess a Forest Service Special Permit while using and camping on national forest lands. The Forest Service designs river outfitter regulations specific to each national forest region of the state.

Outfitters whose services are marketed and available to all members of the public on a recurring basis during the demand season and who have performed acceptably for the previous two-year period under permit are eligible to apply for priority use. Priority use refers to the Forest Service commitment to permit holders for outfitting to give priority consideration to granting the holder a specific amount of available future use. These permits are issued for periods of up to five years. Priority use is established where recreation use levels are planned and managed in terms of launches and people per launch or trips and people per trip.

Another type of permit, entitled a temporary use permit, may be issued for either one trip or a duration of one year or less when the use involves several trips.

It is possible that a forest plan may conclude that there are too many river outfitters. In this event, the authorized officer selects the best qualified from all current priority use permit holders based on past experience. The U.S. Forest Service has the option to limit the number of permits it issues. In contrast, the Division of Parks and Outdoor Recreation has no allocation system for the state licensing program.

Federal Bureau of Land Management (BLM). The BLM requires a commercial permit when recreational use is made of public lands for business or financial gain. The issuance of a Special Recreation Permit (SRP) by BLM does not authorize use of the actual river surface, rather, the use of adjacent public lands is authorized. A Memorandum of Understanding between the BLM and the U.S. Forest Service in Colorado provides for the cooperative issuance of a single permit simultaneously authorizing an outfitter's operation that spans a BLM-Forest Service agency boundary.

In order to obtain an SRP, river outfitters must provide the BLM with proof that they are licensed by the Colorado Division of Parks and Outdoor Recreation. The BLM issues special use permits for commercial river rafting activities on the Colorado River and the Dolores River. The BLM is empowered with significant authority to enforce federal laws against outfitters who hold BLM permits. Their enforcement authority is similar to that of the Division of Parks and Outdoor Recreation.

- * Permittee must make all relevant books, documents and papers available to the BLM for inspection.**
- * BLM may place a permittee on probation or suspension, or revoke the permit if the outfitter violates BLM rules, including failure to provide services specified in the operating plan.**

Other BLM requirements address sanitation, proper care of the environment, and fires. Minimum insurance requirements are also established by BLM. Outfitters seeking a permit to conduct business on BLM land must show proof of the following minimum insurance coverage:

- * **\$300,000 bodily injury for any one person;**
- * **\$300,000 for any one occurrence; and**
- * **\$ 50,000 property damage for any one occurrence.**

(Source: Special Recreation Permit Information, BLM, 1991)

Federal-State Cooperative Regulation. The Arkansas Headwaters Recreation Area (AHRA) agreement of October 27, 1989, established a unique partnership between the Colorado Division of Parks and Outdoor Recreation and the U.S. Bureau of Land Management (BLM) for the management of the Arkansas River corridor between Leadville and Pueblo Reservoir.

Arkansas Headwaters Recreation Area

The Arkansas River from Leadville to Pueblo (148 miles) has gained international recognition for whitewater boating, and is also widely known for fishing. On the Arkansas River, boating has increased by an average of 19% per year from 1982 to 1990! There is more whitewater boating on the Arkansas River than on any other river in the United States, and more whitewater boating there than on all other Colorado rivers combined. Hunting, hiking, fishing, sightseeing, camping, and picnicking have also increased dramatically there, and continue to do so. During the summer of 1992, total visitation was over 388,000 people!

Because of the tremendous amount of activity on the Arkansas River, recreation management, resource protection, and cooperation between communities, landowners, and user groups is essential. The purpose of the Arkansas Headwaters Recreation Area is to manage the resources and use of the Arkansas River in Colorado.

Today the AHRA is managed jointly by the Colorado Division of Parks and Outdoor Recreation (DPOR) and the U.S. Bureau of Land Management (BLM). The Federal-state management agreement is a result of the efforts of the river outfitters who use the Arkansas River. The outfitters did not feel that they were getting a very good return on the 3% special use permit fee that they paid to the U.S. Bureau of Land Management. They had repeatedly requested an upgrade in sanitary facilities, access points to the river, ramps for putting rafts in the river, and parking facilities. For years the BLM responded that there was no budget for any upgrades. The Colorado River Outfitters felt that the 3% fee paid by the river outfitters for their special use permit was lost in a budgetary black hole in Washington, D.C.

The river outfitters proposed a plan to the Director of Parks and Outdoor Recreation whereby the management of the Arkansas River would be administered by the Colorado state government. Thus began the process of developing a cooperative management agreement between the federal government and Colorado state government. After input from anglers, commercial outfitters, private boaters, environmental groups, water user groups, and private property owners, an environmental assessment was issued. The Arkansas Headwaters Recreation Area was formed to ensure a balanced, equitable, and efficient management of the Arkansas River, of BLM lands along the river and of related recreation use and facilities.

It was determined that the revenue generated from the special use permit fee would be expended solely for purposes of resource protection, research, and maintenance activities related to resource protection on public lands.

The Division of Parks and Outdoor Recreation (DPOR) was designated as the lead agency in the management of recreation on public lands and related waters in the AHRA. The BLM participates in recreation management and manages all other multiple use resources.

The primary responsibilities of the DPOR include:

- * providing on-ground presence in managing recreation activities on public lands within the AHRA;**
- * managing the AHRA in conformance with the approved recreation management plan;**
- * collecting all recreation use fees within the AHRA. All fee revenue generated on public land is used in the recreation management and development of public lands along the Arkansas;**
- * working with the BLM to allot and ration river use as specified in the management plan; and**
- * implementing and enforcing applicable State laws and regulations on public lands within the AHRA. These generally involve safety, littering, resource protection, and public conduct.**

The primary responsibilities of the BLM include:

- * **managing all resources other than recreation in the corridor;**
- * **participating in and providing review of recreation management, including allotting and rationing of river use;**
- * **monitoring user preference and visitor use in order to assess environmental effects and identify mitigating measures; and**
- * **monitoring potential impacts to Wilderness Study Areas, wildlife, fisheries, and other environmental impacts related to site developments.**

The success of the AHRA is attributed to the cooperative spirit of the participants effectively addressing issues which had long existed but had never been reconciled. These issues included resource allocation of the river, facility improvements and site acquisitions.

Regulation In Selected States. The accompanying chart provides a snapshot of river outfitter regulation in other states where river outfitting is a significant industry. The licensing and regulation of river outfitters in other states is conducted by a variety of state agencies. These include the State Board of Parks & Recreation, the State Marine Board, the Department of Commerce, State Board of Outfitters and Guides, and the Bureau of State Parks.

While a written or oral examination is not a condition for a Colorado river outfitter license, Utah, Montana and Idaho do require that applicants take an examination. Several states require that both river outfitters and guides obtain a license to practice, where Colorado only requires a river outfitter to obtain a license.

Guide qualifications vary in the selected states, with some specifying hours or days of experience, while others require a designated number of miles or trips on designated river portions to be guided. Colorado requires that guides have fifty hours (50) of training on the river as a guide from a qualified guide instructor. Trip leaders must have logged five-hundred (500) river miles as a qualified guide and guide instructors must have logged a total of fifteen hundred miles (1500) river miles, of which at least seven-hundred fifty (750) have been logged as a guide.

REGULATION IN OTHER STATES

This chart provides a summary of river outfitter regulation in the United States. These particular states were chosen because whitewater rafting is a substantial industry there.

STATE (FEE)	LICENSING AGENCY	EXAM	LIABILITY INSURANCE	BOND REQUIRED	TYPES OF LICENSES	PENALTIES	GUIDE QUALIFICATIONS
UTAH (\$10)	Board of Parks & Recreation	Written	None required by Department of Parks and Recreation	No	River guide permits levels 1-4 Vessel operation permit	No monetary penalty. Hearings determine suspension or revocation.	100 hours experience/20 hours of which must be on operating type of vessel which will be used.
OREGON (\$50)	State Marine Board	None	\$100,000 personal injury to one person - \$300,000 personal injury per occurrence	No	Outfitter and guide certificate of registration	Civil Penalty up to \$500. Class B Misdemeanor	Experience statement stating the number of years of whitewater rafting experience.
MONTANA (Outfitter-\$650) (Professional Guide-\$25)	Department of Commerce - Board of Outfitters	Written	\$100,000 personal injury to one person - \$300,000 personal injury per occurrence	No	Outfitter license - Professional guide license	Misdemeanor Fine not to exceed \$500.	Outfitter - three seasons experience as a licensed guide supervised by a licensed outfitter. Guide - no experience required; must always be supervised by an outfitter.
INDIANO (\$250)	Outfitters and Guides Licensing Board	Oral and/or written	\$100,000 personal injury to one person - \$300,000 personal injury per occurrence	\$5,000	Guide license Outfitter license	\$100 - \$5,000 or imprisonment not to exceed 90 days.	500 miles on classified rivers and one complete trip on each river applied for usage OR 3 complete boat trips on each classified river applied for usage.
PENNSYLVANIA (7 1/2% of gross income)	Bureau of State Parks	None	\$500,000	No	Whitewater rafting concession license agreement	\$200 to \$600	All guides required to have 30 days experience on any whitewater river, with at least 6 trips. Tripleaders need one year of whitewater experience with 30 days as a guide, including 12 guided trips.
WEST VIRGINIA (\$500 per river)	Department of Natural Resources	None	\$300,000 per occurrence for bodily injury.	\$1,000	Commercial whitewater outfitter license	Misdemeanor not less than \$20 or more than \$300	Trip leaders - minimum of 20 trips on river comparable or higher class than river portions to be guided/6 trips on river portion to be guided. Trip Guides - minimum of 10 trips on river comparable or higher class than river portion to be guided/3 trips on river portion to be guided.

IV. RIVER OUTFITTING INDUSTRY IN COLORADO

The State of Colorado has some of the finest recreational rivers in the Western United States. In recent years whitewater boating has become a very popular form of recreation and a significant contributor to Colorado summer tourism.

The economic structure of many Western Slope and mountainous regions of Colorado is oriented around the tourism industry. The economic importance of whitewater boating to some of these areas is substantial. Direct expenditures associated with a whitewater rafting trip include the purchase of such things as guide services, food, transportation to and from the river, equipment purchases, and lodging directly associated with the river trip.

The Colorado River Outfitters Association compiled data to reflect commercial user days and the economic impact of river rafting in Colorado for 1988-1991. The two bar graphs on the following page illustrate the magnitude of the river rafting industry in Colorado.

The economic impact of the river outfitting industry on Colorado has also been calculated specifically for the Arkansas River. The Arkansas River between Granite and Canyon City is the most popular river segment in the state. From 1979 to 1989, commercial rafting increased six-fold on the Arkansas River. (Executive Office of the Governor release, October 27, 1989).

Data contained in the following chart, tabulated by the Arkansas Headwater Recreation Area and the Public Information Corporation illustrates estimated expenditures for commercial whitewater boaters.

ESTIMATED EXPENDITURES FOR WHITEWATER BOATERS			
YEAR	PERSONS	AVERAGE DAILY EXPENDITURE	TOTAL*
1991	194,418	\$78.50	\$39,070,241
1992	218,631	\$82.40	\$46,118,897
* Includes secondary economic impact using a 2.56 multiplier effect provided by Colorado Tourism Board.			
NOTE: Average daily expenditure originally calculated to be \$61.50. Expenditures for 1991 and 1992 are based on a 5% inflation rate.			

The Arkansas Headwaters Recreation Area (AHRA) also compiled use figures for the Arkansas River for May - August 1991 and 1992. The "private" number includes kayaks, whitewater canoes, and rafts while the "commercial" use numbers reflect primarily raft use (Please see next page).

AHRA USE FIGURES

	1991		1992	
	VISITORS	BOATS	VISITORS	BOATS
MAY				
OUTFITTERS	7,931	1,526	11,630	2,219
PRIVATE	1,579	839	2,258	1,348
JUNE				
OUTFITTERS	62,648	10,079	65,137	12,730
PRIVATE	7,268	3,183	5,600	2,744
JULY				
OUTFITTERS	76,518	11,950	92,800	15,148
PRIVATE	6,281	3,188	4,008	1,822
AUGUST				
OUTFITTERS	43,340	7,206	53,524	9,164
PRIVATE	2,241	1,374	1,799	961
TOTAL	207,806	39,345	236,756 *	46,136

* Reflects a 9% increase from 1991.

(Source: Arkansas Headwater Recreation Area)

SURVEY OF RIVER OUTFITTERS

As part of this review, the Department surveyed all 112 licensed river outfitters and received responses from 79. Complete survey results are attached as Appendix E to this report.

Highlights of response by licensed outfitters

- * **Professional river outfitters, as an occupation, are a fairly stable group; 52% have been in business ten years or more.**
- * **Seventy-five percent of the outfitters noted that there has been a substantial increase in the number of commercial trips on Colorado waters in the past several years.**
- * **The current level of state regulation for river outfitters was considered adequate by 63% and burdensome by 33%. Many of the respondents who considered the regulations burdensome referred to the record keeping requirements.**
- * **Licensed river outfitters were asked to characterize their interaction with the river rangers. Overwhelmingly, they stated that the rangers were informative, cooperative, experienced, and pleasant. Only a few licensees described the rangers as unavailable, unreasonable or rude.**
- * **Fifty-four of those surveyed conclude that there should be additional qualifications required by state statute for guides who lead whitewater rafting trips in Class IV (advanced) and Class V (expert) waters (please see Appendix C for definitions). Forty-three percent contend that additional requirements are not necessary because river outfitters self-regulate appropriately.**

V. REVIEW OF STATUTE AND REGULATIONS

REVIEW OF STATUTE

Article 32 of Title 33 of the Colorado Revised Statutes provides for the licensing of river outfitters, and for the regulation of river outfitters, guides, trip leaders, and guide instructors in the State of Colorado. A river outfitter is statutorily defined as "any person soliciting to provide or providing, for compensation, facilities, guide services, or transportation for the primary purpose of river running." The article specifically exempts from regulation those persons who only provide motor vehicles, vessels, and other equipment that is rented. (Section 33-32-102, C.R.S.)

In order to practice as a river outfitter, one must:

- * Pay the required fee to the Board of Parks and Outdoor Recreation ;**
- * Be duly qualified to do business in Colorado, or if a corporation, be incorporated pursuant to the laws of the State of Colorado;**
- * Possess minimum liability insurance coverage of \$300,000 combined single limit of property damage and bodily injury; and**
- * Meet the safety standards for river running established by the Board by regulation.**

The statute also provides for minimum qualifications of guides, trip leaders and guide instructors. These individuals are defined as the following:

- * "Guide" means any individual, including but not limited to subcontractors, employed for compensation by any river outfitter for the purpose of operating vessels.**
- * "Guide Instructor" means any qualified guide whose job responsibilities include the training of guides.**
- * "Trip Leader" means any guide whose job responsibilities include being placed in charge of a river trip.**

In order to practice as a guide one must:

- * be eighteen years of age or older;**

- * **possess a valid standard first-aid card issued by the American Red Cross or equivalent; and**
- * **have fifty hours of training on the river as a guide from a qualified guide instructor.**

In order to practice as a trip leader one must:

- * **be eighteen years of age or older;**
- * **possess a valid standard first-aid card issued by the American Red Cross or equivalent; and**
- * **have logged a total of at least five hundred river miles as a qualified guide.**

In order to practice as a guide instructor one must:

- * **be eighteen years of age or older;**
- * **possess a valid standard first-aid card issued by the American Red Cross or equivalent; and**
- * **have logged a total of at least fifteen hundred river miles, of which at least seven hundred fifty of those river miles were logged while acting as a guide.**

One guide must be aboard each vessel which carries, or is designed for and capable of carrying, three or more commercial passengers. The river outfitter designates one of the guides as the trip leader for each commercial trip. The trip leader is responsible for providing the commercial passengers with an orientation regarding conditions that might be encountered, safety precautions, and emergency procedures.

Any river outfitter operating without a valid license, without insurance or with wanton or willful disregard for the safety of persons or property is guilty of a class 2 misdemeanor. Penalties range from a minimum of \$250.00 and/or three months imprisonment to a maximum of \$1000.00 and/or twelve months imprisonment. Conviction for operating a vessel in a careless or imprudent manner is a class 3 misdemeanor punishable by a minimum penalty of fifty dollars and a maximum penalty of \$750.00 and/or six months imprisonment (Section 33-32-107). Violation of the safety equipment provisions is a misdemeanor and is punishable by a fine of \$100.00, except when there are an insufficient number of PFDs the penalty is a class 3 misdemeanor.

The Board of Parks and Outdoor Recreation has other disciplinary options against outfitters. The Board may deny, suspend or revoke a river outfitter's license (section 33-32-109).

Every peace officer (defined as any parks and recreation officer or division of wildlife officer or any sheriff or city and county law enforcement officer certified by the Colorado law enforcement training academy) has the authority to enforce the provisions of the article.

Peace officers of the state have the authority to issue verbal warnings, tickets (such as penalty assessments and summons and complaints), and arrest licensees and the employees of licensees for violating provisions of Article 32.

REVIEW OF RULES AND REGULATIONS

The Board of Parks and Outdoor Recreation has promulgated several rules to augment the statutory authority to regulate river outfitters. These rules address several broad areas including: issuance of the original license, the limited use license, and form and display of license. There are nine individual rules concerning the responsibilities of river outfitters. These rules address such issues as rights of private landowners, minimum qualifications for licensure, reporting of vessel accidents, and the responsibility for acts of employees.

Other rules concern the operation of licensees with respect to minimum qualifications for guides, instructors, and trip leaders; basic orientation for passengers; maintenance of qualification records for employees; accident reporting requirements; trip log record keeping requirements; safety standards for commercial rafting trips; and enforcement authority by peace officers.

The rules also pertain to complaints, declaratory orders, cease and desist orders and notices of violations. In fact, the rules expand upon suspension or revocation of licenses. For instance, the rules state that an informal public hearing be held within thirty days after the issuance of either a notice of violation or cessation order. In addition the rules specifically outline service of notices of violations, notices of deficiency, patterns of violations and show cause orders.

In many instances, the regulations (Article V - Enforcement) either duplicate references in the statute to the Administrative Procedures Act or are broader than the statute. For example, the regulations expound on cessation orders but nowhere in the statute are peace officers given the authority to issue cease and desist orders.

In addition, the process of informal public hearings, show cause orders, and determination of a pattern of violations constrains the suspension or revocation of a license. The regulations state that in order to suspend or revoke a license, the Division should determine that a pattern of violations exists. A pattern of violations is only established if there were three identical or similar violations occurring within any two year period.

Recommendation 9 advises eliminating "Article V - Enforcement" in the regulations and amending the statute to include cease and desist authority.

VI. REGULATORY EFFORTS OF THE DIVISION OF PARKS AND OUTDOOR RECREATION

LICENSING

The Enforcement Section of the Division of Parks and Outdoor Recreation is designated as the agency that provides regulatory oversight of licensed river outfitters in Colorado. The Board of Parks and Outdoor Recreation promulgates rules to regulate river outfitters, guides, trip leaders, and guide instructors to ensure the safety of river-running activities.

C.R.S. 33-32-104 provides that, upon application for a river outfitters license from the Division of Parks and Outdoor Recreation, payment of a fee determined by the Board, and fulfillment of minimum qualifications, a river outfitter license will be issued. The fee is currently \$300.00 for both an original and annual renewal license and \$75.00 for a limited use license. River outfitters with limited use licenses may use specific river segments in Colorado to initiate their trips, provided these trips are conducted primarily on waters of an adjoining state.

The river outfitter licensing and enforcement program in Colorado is cash funded. The following designated positions within the Division of Parks and Outdoor Recreation, Enforcement Section, spend a percentage of their work schedule on the river outfitting program. The percentage of time spent by the designated positions below totals 55% of the time for one full time equivalent employee (FTE)!

1.0	Boating Safety Coordinator	(20%)
1.0	Chief of Law Enforcement	(10%)
.5	Park Ranger	(50%)

For the past several years, the program budget for the river outfitter licensing program was approximately \$35,000 per year (see Appendix F for graph). The majority of the budget expenditures are for ranger salaries, travel and vehicle costs.

COMPLAINTS

The Division of Parks and Outdoor Recreation is charged with handling all complaints against licensed outfitters or persons practicing outfitting without a license. After receiving complaints regarding river outfitters, the Division refers the complaint immediately to a seasonal Park Ranger. The Ranger reviews and investigates the complaint and makes recommendations to the Division as to action to be taken.

From 1981 through 1984, prior to the 1985 licensing program, DPOR received numerous complaints from both the public and from the U.S. Bureau of Land Management. The nature of such complaints included unsafe rafts, negligence, overloaded boats, lack of extra oars, passengers and guides not wearing personal flotation devices (PFD), and careless or reckless operation of a raft. Investigation of such complaints revealed unsafe practices that were endangering the public.

Since the inception of the licensing program in 1985, and through 1992, the Division has received a total of twenty-six complaints from commercial river outfitter customers and licensed outfitters against river outfitters. The data below demonstrates that of the twenty-six complaints filed from 1985 through 1992 against commercial river outfitters, fourteen originated from the public and twelve were generated by licensed outfitters.

Analysis of Complaints Filed Against River Outfitters

Number of Complaints Received 1985 - 1992

YEAR	NUMBER OF COMPLAINTS FILED
1985	3
1986	6
1987	5
1988	5
1989	2
1990	1
1991	1
1992	3
TOTAL	26

Nature of Complaints Received 1985 - 1992

NUMBER FILED	NATURE OF COMPLAINT
7	Unlicensed activity
8	Safety of clients
1	Breach of contract
4	Refund policy
1	Excessive alcoholic consumption
1	Damages to boat
1	Trespassing on private land
1	Qualification of guides
2	Reckless or negligent behavior
TOTAL 26	

Disposition/Status of Complaints 1985-1992

NUMBER FILED	DISPOSITION/STATUS
4	Notified Outfitter License Required
4	Referred to District Attorney
4	Pending resolution at DPOR
9	Dismissed (after investigation)
4	No Action (no jurisdiction)
1	Citation issued
TOTAL 26	

Enforcement

A goal of the river outfitter's licensing program is to provide for the uniform enforcement of river outfitter licensing laws throughout the state of Colorado. To assist peace officers (river rangers) in conducting these laws in substantially the same manner, given similar circumstances, enforcement guidelines have been developed which reference the regulation or statute being violated. These guidelines are divided into the following sections: license, safety equipment, vessel marking, prohibited operation, trespass complaints, guides, records, accident reporting, health & welfare, and enforcement authority.

To successfully implement the river outfitting regulatory program, the Division of Parks and Outdoor Recreation employs two seasonal rangers in the summer to provide enforcement of the Colorado boating law and the river outfitter licensing program for most rivers in Colorado. One permanent full-time ranger, one permanent part-time ranger and two seasonal rangers are employed by the Arkansas Headwater Recreation Area. In addition to the enforcement of the river outfitter licensing program, the full-time and part-time rangers are responsible for park patrol and maintenance.

Since 1990, approximately 50% of ranger patrol time has been spent on the Colorado River. Before the implementation of the Arkansas Headwater Recreation Area, a similar percentage of time was spent on the Arkansas River. The success of AHRA and the joint cooperation between DPOR and the BLM is a good model for use on other Colorado rivers.

In addition to on-river patrol time, rangers enforce the river outfitting licensing program during investigations and office records inspections. The graphs on the following page demonstrate the percentage of time that rangers spend related to the licensing program.

The table below reflects the various activities performed by the Division of Parks and Outdoor Recreation as part of the river outfitter program from May through September 1985 - 1991.

Year	Licenses Issued	Record Inspections	Safety Inspections	Citations Issued	Unlicensed Outfitters Investigated
1985	1 25	184	258	2	4
1986	1 13	137	214	9	5
1987	1 10	136	309	60	7
1988	1 17	101	298	44	3
1989	1 16	81	114	8	6
1990	1 18	98	164	9	2
1991	1 18	94	210	23	1
1992	1 15	103	188*	43	1
TOTAL	9 32	934	1755	198	29

(* There were also 560 visual safety inspections)

During 1985 and 1986, the first two seasons of the program, only 11 citations were issued. The numbers are substantially less than subsequent years because the Enforcement Division of Parks and Recreation focused on education and verbal warnings. The goal was to obtain voluntary compliance and to establish a rapport with the river outfitter industry.

The regulatory program for river outfitters varies from most other occupational licensing programs. The outfitters program is proactive in its nature. It does not rely primarily on complaints for its enforcement of rule and statutory violations. A higher level of regulation is found with this program than a standard program that relies on after the fact problem identification and resolution. The rangers are out in the field issuing notices of violation, inspecting records, and patrolling the rivers.

Accident and Incident Reporting

Article III, #304 of Colorado River Outfitters Rules and Regulations defines the requirements for reporting accidents and incidents. Licensed river outfitters are required to report any accident occurring during a commercial trip that directly involves vessels, equipment, commercial passengers or guides. The full report of the accident must be submitted to the Division of Parks and Outdoor Recreation within five days after the date of the accident. Licensed river outfitters are required to immediately report any death or disappearance of any customer to the law enforcement agency having jurisdiction, usually the county sheriff.

The rules require that the accident reports contain the following information:

- * locality, time and date of the accident;**
- * weather and water conditions existing at the time of the accident, including air and water temperature, class of whitewater, cubic feet per second and wind and visibility;**
- * name, address, phone number and date of birth of each operator and owner of a vessel involved in the accident;**
- * name, address, phone number and date of birth of any person injured or killed as the result of an accident;**
- * the nature and extent of injury to any person;**
- * a description of any property damage in excess of \$200;**
- * a description of how the accident occurred;**
- * a specific description of the vessel;**
- * name, address, and phone number of all passengers involved in the accident and of any known witnesses; and**
- * name, address, phone number and date of birth of the trip leader.**

DPOR categorizes river accidents as follows: collision with vessel, falls overboard, fixed object impact, falls in boat, and capsized boats. The chart on the following page illustrates river accidents by type for river rafting in Colorado from 1985-1992.

The Arkansas Headwater Recreation Area reported that during the 1992 season there were twenty-five commercial river rafting accidents on the Arkansas River in Colorado. The following two charts summarize the types of accidents and the types of injuries for the 1992 season.

1992 ARKANSAS RIVER RAFTING SEASON

SUMMARY BY TYPE OF ACCIDENT

Fatalities	2
Falls in boat	9
Falls overboard	6
Capsize	5
Collisions with fixed objects	3
TOTAL	25

SUMMARY BY TYPE OF INJURY

Lacerations	8
Fractures	4
Contusions	4
Dislocations	3
Hypothermia	1
Knee	1
Hematoma	1
* Near drowning	1
Heart failure (fatality)	1
Drowning (fatality)	1
TOTAL	25

* The only accident that received a violation notice was the fall overboard that resulted in a near drowning.

Accident and Death Investigations

Since regulation began, there have been four commercial river rafting fatalities, one in 1986, one in 1991 and two in 1992. All four fatalities occurred on the Arkansas River, with three occurring on the Royal Gorge segment where navigation requires expert maneuvering and waters are turbulent, resulting in a moderate to high risk of injury to boaters. After extensive investigation by local officials, AHRA, and the Division of Parks and Outdoor Recreation, it was determined that there was no negligence, careless behavior, or wanton and willful disregard for the safety of participants by a river outfitter with respect to any of these deaths. The program procedures for investigating a death are explained in the subsequent paragraphs.

In the event of a death or serious injury, the Division of Parks and Outdoor Recreation contacts the appropriate ranger team to investigate the incident. If the incident has occurred on the Arkansas River, the Arkansas Headwaters Recreation Area is immediately contacted and they proceed with an investigation. If the incident has occurred on any other river in Colorado, the Division of Parks and Outdoor Recreation contacts the statewide ranger team. The Division exhausts all existing communication lines in order to contact the ranger team. If the ranger team cannot be reached, the Law Enforcement Unit will coordinate the agencies' response and officers will be assigned to begin the investigation. If a victim is missing, a rapid search involving river outfitters and guides on the river is visually conducted. If the victim is not located, the county sheriff will activate search and rescue efforts. Not all county sheriff offices have immediate access to search and rescue teams. The representative from the county sheriff's office prepares an incident report detailing the accident and identifying the person missing and the persons contacted and interviewed.

The Division of Parks and Outdoor Recreation proceeds with an extensive investigation of the incident. The Division examines the equipment, verifies the outfitter's license, reviews guide and trip leader qualification records, and reviews the trip log that identifies the name of the other passengers participating in the rafting trip. The Division obtains statements from all passengers (often out of state), employees of the river outfitter responsible for the trip, and from employees of other river outfitters who either assisted during the incident or observed the incident. In addition, the Division attempts to locate any persons who might have photographed the overturned raft.

The Division obtains and reviews the reports from the coroner and from the county sheriff's department. A comprehensive and thorough analysis is conducted of the incident and a final report is written. Depending upon the findings of the final report, the Division takes appropriate action if the incident was not the result of an unavoidable accident or the fault of the passenger. If the outfitter was in any way responsible, the Division has the authority and may proceed to order a cessation of river outfitter operations or of the portion thereof, relevant to the accident. Formal disciplinary proceedings follow with the possibility of suspension or revocation of the license.

Disciplinary Actions

The Board and the Division of Parks and Outdoor Recreation have a variety of enforcement

mechanisms available to them which are created by statute to assure that river outfitting in Colorado provides for the health, welfare, and safety of its participants. Every peace officer, as defined by statute, is authorized to enforce the provisions of Article 32, Title 33, to inspect any vessel, to stop and board any vessel, and to bring any vessel to shore.

The existing regulations, however, have impeded the process of suspension or revocation. The rules regarding suspension or revocation of licenses specifically address the issue of pattern of violations. In many cases, before a license can be revoked or suspended, the division must determine a pattern of violations has existed. Patterns of violation are determined to have existed based upon three or more inspections or investigations of the river outfitter within any two year period.

As reflected on the following chart, the Division has issued 127 citations for violations from 1988 - 1992. In addition, the Division has rejected 56 applications for licenses from 1985-1992. Since the inception of the program, the Board has not suspended or revoked any license. DPOR has also issued several notices of deficiencies to licensed river outfitters informing them of their right to a public hearing. In all cases, the licensee in question departed from the state.

Recommendation 8 addresses the burdensome and redundant process to suspend or revoke a license by recommending the deletion of the enforcement section of the regulations and an amendment to the statute.

**Cited Violations for River Outfitters
1988-1992**

Type of Violation	Number of Violations
Failure to maintain adequate records (predominately guide records)	57
Improper use of personal flotation devices (PFDs)	15
Lack of proper first-aid kit	7
Lack of proper patch & repair kit	5
Operating a commercial trip without a license	2
Failure to report an accident	2
Lack of proper airpump	2
Lack of proper throwbag	1
Improper vessel markings	34
Exceed load limit of raft	1
Reckless behavior on the river	1
Total	127

Two-thirds of the cited violations pertain to the failure to maintain adequate records. This type of violation includes the failure to report accidents, nonexistent or outdated first aid and CPR cards, or insufficient river log experience demonstrating guide qualifications. One-third of the citations issued represent a lack of, or improper use of safety equipment (i.e. PFDs, throwbags, repair kits, etc.).

VII. SHOULD STATE REGULATION OF RIVER OUTFITTERS CONTINUE?

Every year in increasing numbers, the inhabitants of the state of Colorado and nonresidents are enjoying the recreational value of Colorado's rivers. An increasing number of those participating in recreation on the rivers partake in whitewater rafting. A whitewater river/adventure trip is not without risk. The same elements that contribute to the unique character of a rafting experience may also cause accidental injury or, in extreme cases, death. Boats may turn over in the rapids, which may result in hypothermia, injuries sustained from floating debris or rocks in the river, or death by drowning.

River safety consists of several factors that include:

- * personal preparedness and responsibility;**
- * boat preparedness and equipment;**
- * group equipment (throwing line, first-aid kit);**
- * leader's responsibility (knowledge of river, conditions); and**
- * on the river knowledge.**

The purpose of state regulation of river outfitters is to protect the health, welfare, and safety of the visitors, tourists and citizens of Colorado. To do so, the legislation seeks to ensure the competence of commercial trip guides and trip leaders by requiring specific standards for experience. In addition, the enforcement program for river outfitters makes inspections of records and safety equipment, handles investigations of complaints and accidents, and participates in search and rescue operations.

The licensing of river outfitters was established to assure that all commercial river outfitters meet and maintain minimum standards of safety for equipment and guides. Industry efforts to set standards in the 1970's and early 1980's were not as demanding as those promulgated by the river outfitting licensing program. Were regulation to cease, river outfitters might reduce the standards for guide qualifications and safety equipment. The 1992 legislation discussed on page 6, proposed reducing trip leader and guide instructor qualifications substantially. In addition, responses to the river outfitter survey (please see Appendix D) indicate that some outfitters regard the requirements for repair kits and personal flotation devices as excessive for day trips.

As illustrated from the data provided by the Arkansas Headwater Recreation Area, 223,091 persons participated in commercial boating on the Arkansas River in 1992, a number equal to more than 6% of Colorado's total population. This participation reflects an increase of 9% from 1991.

The Colorado river outfitter industry has a good safety record. Over one million commercial passengers have floated down Colorado rivers since the inception of the program in 1985. As previously discussed in this report, prior to the licensing program, there were three deaths and several incidents of injury due to negligent and reckless behavior by some of the river outfitters.

In order to increase commercial boating safety on the Arkansas River, AHRA has developed improved safety requirements in 1993 for three sections on the Arkansas River: The Royal Gorge, The Numbers, and Pine Creek. These sections require more advanced training and experience because of the technical degree of difficulty required to navigate the section. The improved safety requirements for guides include additional river miles experience, additional practice runs on the particular river section without guests, and a certification run with guests and a trainer on board.

The Colorado River Outfitter Licensing Program has been very effective in protecting the health, safety and welfare of the public participating in commercial river rafting expeditions. The present state regulatory system provides assurance that licensed river outfitters have satisfied certain experience requirements and have demonstrated professional competence. Regulation also assures the public that the river rafts are outfitted with the necessary equipment to conduct safe passage.

CONCLUSION

It is the conclusion of the Department of Regulatory Agencies that regulation of the river outfitting industry is needed and should continue. The present scheme, with some changes particularly in the area of disciplinary actions and river outfitter definition, seems to be the most efficient approach to regulation. The following recommended changes to the statute and regulations will strengthen the river outfitter licensing program.

Recommendation 1: The General Assembly should continue Article 32 Section 33 of the Colorado Revised Statutes.

VIII. STATUTORY RECOMMENDATIONS

If the General Assembly decides to continue the regulation of river outfitters pursuant to C.R.S. 33-32-101 et seq., the following statutory and rule recommendations are proposed to clarify the statute and improve the regulatory performance of the program.

REVISE DEFINITIONS

Recommendation 2: (A) The General Assembly should amend the definition of "river outfitter" found in C.R.S. 33-32-102(6) to read as follows:

"River Outfitter" means any person soliciting to provide or providing, for compensation, WHETHER OR NOT FOR PROFIT, facilities, guide services, or transportation for the PROVISION of river-running; except that "river outfitter" does not include any person whose only service is providing motor vehicles, vessels, and other equipment for rent or any person whose only service is providing instruction in canoeing or kayaking skills.

(B) The Board of Parks and Outdoor Recreation should promulgate rules that allow for licensees who are nonprofit entities to be eligible for the limited use fee schedule.

(C) The General Assembly should amend the definition of "Person" found in 33-32-102(5) to read:

"Person" means any individual, sole proprietorship, partnership, corporation, LIMITED LIABILITY COMPANY, firm, association, NONPROFIT ORGANIZATION OR CORPORATION AS DEFINED IN 13-21-115.5, C.R.S., or ANY OTHER legal entity LOCATED within or OUTSIDE of this state.

(D) The General Assembly should amend section 33-32-102 by adding the definition of "commercial trip" to read:

"Commercial trip" means any river voyage where there is advertising or soliciting for trip participants or where any person providing river outfitter services accepts, whether directly or indirectly, any consideration of value as compensation for the provision of river outfitter services, whether or not for profit.

The definition of river outfitter currently found in the Act is incomplete. The use of the term "primary purpose" could possibly exempt many river-running enterprises from licensure. A recent district court case in Colorado, Seventh Day Adventist Association of Colorado vs. People of the State of Colorado, No. 92CR07, (District Court, Chaffee County, Colorado, Oct. 19, 1992) ruled that a Seventh Day Adventist children's summer camp operation was not required to obtain a river outfitters license for river rafting trips offered by the camp. The Seventh Day Adventist Camp in fact advertises its white water rafting activities in a brochure and charges a fee for the trip. The summer camp brochure details white water rafting trips for young adults and white water rafting adult training seminars. The judge reasoned that the camp was not engaged in "a river-outfitting business" and that its rafting activities did not constitute a "commercial use" of the river and adjoining Department of Parks and Outdoor Recreation property in part because the camp did not provide river-running for profit.

Groups such as metropolitan recreation districts, summer camps, and military base recreation programs run river-rafting trips where compensation is paid to the organization conducting the river raft trips. Camps and metropolitan recreation districts carry a significant number of children. According to the Division of Parks and Outdoor Recreation, camps, military and metropolitan district recreational programs traditionally utilize guides that are less skilled than those in the industry.

The inherent purpose of regulating river outfitting expeditions is to assure public safety and to assure that guides and equipment meet qualifications and standards necessary to implement a safe and effective program. Whether an organization profits significantly from the venture, covers its expenses, or suffers a loss should not affect the public's right to protection. The adoption of Recommendations 2A and 2D will solve this problem.

Recommendation 2B proposes promulgating rules that would allow nonprofit organizations to be eligible for the limited use license fee amount of \$75.00 instead of the annual license fee amount of \$300.00.

Recommendation 2C proposes including nonprofit organizations and limited liability companies in the revised definition of "person". A limited liability company is a recognized type of corporation under Colorado law and should be included so the definition encompasses all types of legal business entities in the state. Nonprofit organizations should be included to complement the revised definition of "river outfitter" as discussed above.

The term "commercial trip" is currently defined in the rules and regulations of river outfitters but is not included in statutory definitions. Recommendation 4 on page 34 of this report, proposes expanding prohibited operations warranting a misdemeanor charge and uses the term "commercial trip" throughout the recommendation. The proposed definition for inclusion in the statute will further clarify the term.

REVISE LEGISLATIVE INTENT

Recommendation 3: The General Assembly should amend the first sentence of section 33-32-101, C.R.S. to read as follows:

The general assembly declares that it is the policy of this state to promote and encourage residents and nonresidents alike to participate in the enjoyment and use of the rivers of this state and, to that end, in the exercise of the police powers of this state for the purpose of safeguarding the health, safety, welfare, and freedom from injury or danger of such residents and nonresidents, to license and regulate those persons who, for compensation, WHETHER OR NOT FOR PROFIT, provide equipment or personal services to such residents and nonresidents for the purpose of floating on rivers in this state.

The recommendation to amend the legislative declaration conforms to the revised definition of "river outfitter".

EXPAND PROHIBITED OPERATIONS WARRANTING A MISDEMEANOR CHARGE

Recommendation 4: The General Assembly should amend section 33-32-107(2)(d) by adding the following specific violations punishable as a class 2 misdemeanor. The amended statute should read as follows (minus parenthetical citations to the existing river outfitter rules and regulations):

It is a violation of this article to: (d) Operate a commercial trip without one guide aboard each vessel which carries three or more passengers, or is designed to carry three or more passengers and carries any number of passengers (Reg.#304-1); fail to assign a trip leader for a commercial trip (Reg.#304-4); fail to provide a passenger orientation as may be required by board rule or regulation prior to embarking on a commercial trip (Reg.#304-5); operate a commercial trip with an unqualified guide as the operator of a vessel (Reg. #304-2); operate a commercial trip without a qualified trip leader in charge of the trip (Reg. 304-4); employ any person as a guide who has not received all required guide training from a qualified guide instructor (Reg.#304-3); or fail to maintain adequate guide qualification records (Reg.#304-6). Any person who violates the provisions of this paragraph (d) is guilty of a class 2 misdemeanor and, upon conviction thereof, shall be punished as provided in section 18-1-106, C.R.S.

(e) fail to report to local law enforcement agency of jurisdiction an accident involving a death or disappearance of a person as soon as

practicable, but in no event later than 12 hours, after such accident. (Reg.#304-10c). Any person who violates the provisions of this paragraph (e) is guilty of a class 2 misdemeanor and, upon conviction thereof, shall be punished as provided in section 18-1-106, C.R.S.

Currently, violations that are not specifically cited in 33-32-107(1) and (2) are punishable by a \$25.00 fine pursuant to 33-15-102, C.R.S. This part of the law states that any person who violates any of the rules or regulations of the board which do not have a specific penalty listed is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of \$25.00.

The violations recommended for specific inclusion in the statute are not currently cited in 33-32-107(1) and (2) and are punishable by a \$25.00 fine only. However, they are as serious as the violations currently in statute that carry a class 2 misdemeanor charge. There is substantial potential for harm to the consumer due to any of the above-mentioned violations and the penalty for such violations should relate more closely to the potential harm. The current \$25.00 fine is inadequate to deter violations.

BOARD AUTHORITY TO GRANT VARIANCES

Recommendation 5: The General Assembly should amend the statute to include a new section granting the Division Director the authority to issue variances. The amended section should read as follows:

The Division Director may grant a variance to a river outfitter from the requirement for guides on a vessel with three or more passengers when in the Division Director's determination the health, safety, and welfare of the general public will not be endangered by a reduced number of guides.

Presently, Article III, #304 of the regulations requires that at least one guide be aboard each vessel which carries, or is designed for and capable of carrying, three or more commercial passengers. This regulation further enables the Division Director to grant a variance upon receipt of a written request containing the nature of the variance requested and the manner of operations for which a variance is sought. In determining whether or not to grant such a variance, the Division Director considers whether or not the variance sought would endanger public safety, health or welfare.

This variance essentially pertains to canoe trips on slow-moving water where the seating capacity is four persons. A family of four prefers to sit together as a group and not be separated into two different canoes. In these circumstances, where a number of canoes might not have a guide in attendance on the vessel, the river outfitter provides a guide on the lead boat and one on the tail-end boat of the group. The statute, however, does not presently authorize the Division Director to grant a variance. Therefore, this section would be more appropriately placed in statute than in regulation.

DISCIPLINARY ACTIONS

Recommendation 6: The General Assembly should amend the statute to include a new section entitled "Disciplinary actions - grounds for discipline". The amended section should read: 1) The board may deny, suspend, revoke or place on probation an outfitter's license if the applicant or holder:

(a) violates any lawful order of the division or the board or any provision of this article or the rules and regulations established under this article; (previously 33-32-109, C.R.S.)

(b) fails to meet the requirements specified in section 33-32-105 or 33-32-106 or uses fraud, misrepresentation, or deceit in applying for or attempting to apply for licensure (previously 33-32-109, C.R.S.);

(c) is or has been convicted of unlawfully acting in the capacity of a paid river outfitter or advertising or representing oneself as a river outfitter in this state without first obtaining a river outfitter's license (previously Rule #316(2c);

(d) has incurred disciplinary action related to the practice of river outfitting in another jurisdiction. Evidence of such disciplinary action shall be prima facie evidence for denial of license or other disciplinary action if the violation would be grounds for such disciplinary action in this state (new addition);

(e) has been convicted of two second or third degree criminal trespass convictions within a three to five year time period pursuant to section 18-4-503 or 18-4-504, C.R.S., for acts committed during a commercial trip; except that the board shall be governed by the provisions of section 24-5-101, C.R.S. in considering such conviction (previously 33-32-107(3), C.R.S.);

(f) employs any person as a guide who falls to meet the requirements of section 33-32-105.5(f) (previously 33-32-106, C.R.S.).

(2) Any proceeding to deny, suspend, revoke, or place on probation a licensee shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S. Such proceeding may be conducted by an administrative law judge designated pursuant to part 10 of article 30 of title 24, C.R.S.

There is no single section currently in the river outfitters' statute that specifically addresses grounds for disciplinary action. This section needs to be added so that all matters relating to disciplinary actions are distinct and explicit. Recommendation 5 consolidates this information from other sections in the statute and from the regulations and clarifies the Board's responsibility regarding disciplinary actions. Recommendations 5a, 5b, 5c, and 5f on the previous page presently exist in either the river outfitter statute or regulation.

In reference to Recommendation 5d, the Board currently does not have the authority to deny, revoke or suspend a license if a licensee has incurred disciplinary action relating to the practice of river outfitting in another jurisdiction. The board has the authority to deny an applicant a license as a river outfitter if there is probable cause to believe that person has committed acts that would violate Title 33, Article 32 of Colorado law. It should also be able to accept as prima facie evidence any previous suspension or revocation of a river outfitter's license in another jurisdiction as grounds for denial of a Colorado license.

In reference to Recommendation 5e (criminal trespass), presently the river outfitter statute provides for the following two penalties:

- 1. The first offense for criminal trespassing is a criminal sanction (misdemeanor or petty offense) provided in 18-4-503, C.R.S. and 18-4-504, C.R.S.**
- 2. The second offense is a civil sanction (revocation of license).**

The sequence of violations is both unusual and confusing. For the first offense, the sanctions are criminal and for the second offense the sanctions are civil. The proposed recommendation, 5e, would enable the Board to impose a penalty on the river outfitter (suspension, probation, or revocation) whether the offense was a first, second or third offense. Additionally, the proposed recommendation, makes license revocation discretionary with the board depending on the circumstances surrounding that particular violation. This is the same flexibility that is currently provided for in the hunting and fishing outfitter's law.

PROHIBITION OF CONTROLLED SUBSTANCES

Recommendation 7: The General Assembly should amend section 33-32-107, C.R.S. by adding the following:

No river outfitter or guide shall operate a vessel nor shall any outfitter or guide allow another person to operate a vessel on a commercial trip while such person operating the vessel is under the influence of alcohol, a controlled substance as defined in section 12-22-303(7), C.R.S. or any other drug, or any combination thereof, which renders him incapable of safely operating a vessel, nor shall the river outfitter or guide knowingly authorize or permit such vessel to be operated by or under the actual physical control of any passenger or other person if such passenger or person is under the influence of alcohol, a controlled substance, or any other drug, or any combination thereof, which renders him incapable of safely operating a vessel (previously Rule #306(2)). Any person who violates the provisions of this paragraph is guilty of a class 1 misdemeanor, and upon conviction thereof, shall be punished as provided in section 18-1-106, C.R.S.

Outfitters and guides shall make a reasonable effort to determine whether passengers and/or guests on a commercial trip are under the influence of alcohol, controlled substances or other drugs. If such a determination is made, these people shall be prevented from taking the trip, or if the trip is already underway, proper care shall be taken to protect the individual identified and other members of the trip. This may include stopping the trip at a suitable location on the river bank.

Commercial passengers participating in river rafting trips place a certain level of trust in the guide. The guide must be able to evaluate the river rafting situation as it unfolds. In addition, in a great percentage of rafting trips the passengers themselves participate in the paddling of the raft. If either the guide or a passenger is operating a vessel under the influence of alcohol or a controlled substance, the welfare and safety of the remainder of the boats' inhabitants are placed in jeopardy.

INCREASE PENALTY FOR UNLICENSED OUTFITTER

Recommendation 8: The General Assembly should amend section 33-32-107(1)(b) by strengthening the penalty imposed for operating a river-outfitting business without a valid license. The amended section should read, "Any river outfitter who violates the provisions of this subsection(1) is guilty of a class 2 misdemeanor, and upon conviction thereof, shall be punished as provided in 18-1-106. Upon a second or subsequent conviction, such person commits a class 1 misdemeanor and shall be punished as provided in section 18-1-105, C.R.S.

The current penalty for practicing commercial river outfitting without a license is a class 2 misdemeanor. Every year, the Division investigates reports of several unlicensed outfitters. The purpose of the licensing program is to provide a standard for river outfitters that offers protection to the health, safety and welfare of the public. Unlicensed outfitters often do not adhere to the same standards that licensed river outfitters follow. This recommendation seeks to protect the public by further deterring unlicensed outfitters.

ENFORCEMENT REGULATIONS

Recommendation 9: The General Assembly should delete Article V - Enforcement, Sections 311-317 from the river outfitters' rules and regulations. Relevant sections should be added by amendment to Article 32, Title 33.

The Enforcement Section of the River Outfitters Rules and Regulations currently sets forth general requirements for enforcement, including provisions relating to notices of violation, cessation orders, notices of deficiency, informal public hearings, show cause orders, patterns of violations, suspensions, revocations, or denials of river outfitter licenses. These provisions are redundant of the statute and unnecessarily burdensome. In fact, they duplicate provisions in the Colorado Administrative Procedures Act.

One particular provision that illustrates the burdensome regulations is the "pattern of violations." The public is not adequately protected when the regulations specifically require that a "pattern of violations" be demonstrated before suspension or revocation may occur. This requirement is unnecessarily difficult to prove and could expose consumers to increased risk at the hands of incompetent commercial rafters. The "pattern of violations" requirement provides the licensee with the "right" to violate the licensing act a number of times without the possibility of discipline being imposed. As a result, some negligent and/or incompetent professional practices are allowed to continue. The rules regarding the "pattern of violations" are not specifically referred to Article 32, Title 33 and therefore exceed the scope of the statute.

In addition, the regulations fix a period of time, not to exceed 30 days, within which abatement of a violation must be accomplished. A result of this provision is that the regulating agency's authority is lessened, thereby allowing the licensee to use the regulation as a shield against a disciplinary prosecution, arguing that they should have first been given a warning and a chance to correct the behavior.

By deleting the enforcement section and amending the statute, the Board and the Division of Parks and Outdoor Recreation will be able to implement any disciplinary actions needed, while the licensee will still be guaranteed due process. Title 33-32-109, C.R.S. assures that all parties to any agency adjudicatory proceeding are accorded due process of law by requiring that any proceeding to deny, suspend or revoke a license granted shall be conducted pursuant to sections 24-2-104 and 24-4-10, C.R.S. of the Administrative Procedure Act (APA).

CEASE AND DESIST AUTHORITY

Recommendation 10: The General Assembly should amend section 33-32-108 by adding cease and desist authority, as follows:

(a) When an authorized representative of the Division conducts any inspection or investigation and determines that any condition or practice subject to Article 32, Title 33, C.R.S., is in violation of the provisions of Article 32, Title 33, C.R.S. or these rules or regulations, and that any such violation creates an emergency condition which may have a significant adverse affect on the health, safety, or welfare of any person, then such authorized representative shall immediately issue an order to cease and desist such activity of river outfitter operations. The order shall set forth the statutes and rules and regulations alleged to have been violated, the facts alleged to have constituted the violation, and the requirement that all unlawful acts cease forthwith. The person so ordered may request a hearing on the question of whether any violation occurred if such request is made within thirty days after the date of service of the order to cease and desist. The

hearing shall be conducted in accordance with the provisions of article 4 of title 24, C.R.S.

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

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

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

Cessation orders are currently found in the Regulation Section, Article V, #311. However, there is no provision for cease and desist authority in the statute. The rules exceed the scope of the statute. Nevertheless, cease and desist authority is necessary for the enforcement of the program to protect the public adequately and should be included in the statute.

PROHIBIT OUTFITTERS UNDER DISCIPLINE FROM ACTING AS A GUIDE

Recommendation 11: The General Assembly should amend section 33-32-107, C.R.S. by the addition of a new subsection (4) making it a violation of the article for a river outfitter who has had a river outfitter's license revoked, suspended or placed on probation, to work as a guide until the period of suspension or probation ends, the license is reissued or the Board grants permission to work as a guide.

If a river outfitter's license is suspended or revoked, the intent is clear that this individual should not practice outfitting in this state. However, this individual may still practice as a guide because there is no state license required for guides. No protection of the public is gained when the intent of the law is so easily circumvented.

LETTER OF ADMONITION AND PROBATIONARY AUTHORITY

Recommendation 12: The General Assembly should amend 33-32-109, C.R.S. to allow the board to issue a letter of admonition or place a river outfitter on probation.

The current statute offers little choice other than revocation or suspension for a violation of the statute. The board should be allowed to issue letters of admonition without hearing, as is the case for other licensing boards. There may be situations that warrant some action by the board but are not serious enough to justify revocation or suspension. An official letter of reprimand is often an effective tool to address the problem.

This revision will conform the statute to the current standards relating to disciplinary proceedings as established in other regulatory bodies in the State of Colorado.

JUDICIAL REVIEW

Recommendation 13: The General Assembly should amend this article to provide that final decisions be appealed to the Court of Appeals. The added section should read:

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

There is currently no specific provision in the river outfitter licensing statute that addresses the appeal process. Once the issues in a case have been thoroughly considered at the administrative level, an appeals court is the appropriate place to perform a judicial review and render an opinion. In addition, appeals court judges are well acquainted with handling the kind of complex and arcane arguments which are often left over after a case has been through the administrative hearings process.

Virtually all of the regulatory boards under the Department of Regulatory Agencies have statutory provisions that allow their disciplinary actions to be appealed to the Colorado Court of Appeals. Such a provision is a necessary element in providing an appropriate level of due process to those persons who may be subject to disciplinary actions.

IX. ADMINISTRATIVE FINDINGS AND RECOMMENDATIONS

Recommendation 14: Repeal all river outfitter rules and regulations and promulgate new rules and regulations.

The Board of Parks and Outdoor Recreations should repeal the river outfitter rules and regulations. During the sunset review process, it was determined that many of the rules and regulations governing river outfitters duplicate statutory provisions are awkward, and the rules themselves are often redundant. Segments of the rules parallel the statute, while other portions exceed statutory authority. This sunset review recommended that several provisions of the regulations be enacted in statute. New rules and regulations should be promulgated to eliminate unnecessary sections and to clarify obscure sections.

Rule making should coincide with the effective date of the statutory revisions.

Recommendation 15: The Board should promulgate regulations specifically to outline the procedures followed by the Board and the Enforcement Section of the Division of Parks and Outdoor Recreation in the event of a death or serious injury.

There is currently a window of time between the occurrence of a death or serious injury and the issuance of a final report which details the particulars of the incident. During this time, the Division very carefully investigates all aspects of the incident to determine the cause. From a public protection point of view, however, the boat and the river operator should cease operations until the Division or Sheriff's office reasonably determines that the incident was not the fault of the guide or the result of equipment failure. However, in no case should the suspension of the guide be more than seventy-two hours from the time the Division ranger teams or sheriff's office have been notified. The seventy-two hour ceiling helps ensure that the state is not arbitrarily depriving the outfitter/guide of the opportunity to work when there is no evidence that the outfitter/guide was at fault.

Recommendation 16: The Board should revise Regulation 304.10(d) by adding the requirement that the river outfitter boat accident report form contain the name and office of any police/sheriff officer who conducts an investigation.

This additional information will enable the Division to have a record of the county and officer who performed the initial investigation of the incident on the accident report form.

APPENDIX A

SUNSET STATUTORY EVALUATION CRITERIA

- (I) Whether regulation by the agency is necessary to protect the public health, safety and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less or the same degree of regulations;**
- (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 of the Department of Regulatory Agencies 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 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;**
- (IX) Whether administrative and statutory changes are necessary to improve agency operations to enhance public interest.**

**APPENDIX B
CITATIONS ISSUED**

DATE	CITATION	DISPOSITION
1. 9/15/92	operation of a commercial vessel in a careless manner	paid
2. 9/13/92	failure to maintain guide records	paid
3. 9/06/92	failure to maintain guide records	paid
4. 9/05/92	failure to accurately report commercial boating accident	paid
5. 9/03/92	operating a commercial trip with unqualified guide	paid
6. 8/30/92	failure to maintain guide qualification records	paid
7. 8/30/92	failure to maintain guide records	paid
8. 8/29/92	failure to wear and fasten a PFD	paid
9. 8/27/92	failure to maintain guide records	summons
10. 8/23/92	failure to maintain guide records	summons
11. 8/22/92	failure to maintain guide records	paid
12. 8/22/92	failure to maintain guide records	summons
13. 8/21/92	failure to maintain guide records	paid
14. 8/21/92	operating a trip without a proper first-aid kit	paid
15. 8/19/92	maintaining inadequate guide records	summons
16. 8/17/92	failure to maintain guide records	paid
17. 8/10/92	failure to maintain guide records	summons
18. 8/08/92	operating a trip without a proper first-aid kit	paid
19. 8/09/92	failure to maintain guide records	paid
20. 8/07/92	unlawful failure to maintain guide records	dismissed
21. 8/06/92	failure of guide to possess a valid first-aid & CPR card	bench warrant
22. 8/02/92	operating a trip without a proper first-aid kit	paid
23. 07/27/92	failure to maintain adequate guide records	paid
24. 07/26/92	unlawful use of a type III PFD	paid
25. 07/21/92	failure to wear a PFD (guide)	paid
26. 07/15/92	unlawful use of a type III PFD on a passenger	summons
27. 07/06/92	operating a trip without sufficient number of PFDs	went to court - guilty plea
28. 07/04/92	operating a trip without proper patch kit	paid
29. 07/02/92	operating trip without proper PFDs	went to court - guilty plea
30. 06/27/92	operating trip without enough proper PFDs	summons
31. 06/01/92	operating trip without proper first-aid kit	went to court - guilty plea
32. 05/24/92	trip without proper patch & repair kit	paid

33. 09/12/91	failure to maintain guide records	paid
34. 09/01/91	failure to maintain guide records	paid
35. 08/30/91	inadequate guide records	paid
36. 08/29/91	inadequate guide records	summons
37. 08/19/91	operating outfitter business without a license (didn't renew in 91)	went to court - guilty plea
38. 08/18/91	failure to wear PFD	bench warrant
39. 08/10/91	failure to submit bar within five days	went to court - guilty plea
40. 08/09/91	failure to maintain adequate guide records	went to court - guilty plea
41. 07/30/91	failure to maintain adequate guide records	paid
42. 07/17/91	failure to maintain guide records	paid
43. 07/17/91	failure to maintain adequate guide records	dismissed
44. 07/11/91	failure to maintain guide qualification records	paid
45. 07/11/91	failure to maintain guide qualification records	paid
46. 07/08/91	operating a trip without a serviceable first-aid kit	paid
47. 07/08/91	failure to maintain adequate guide records	paid
48. 06/30/91	commercial trip without proper PFD on passenger	bench warrant
49. 06/26/91	inadequate guide records	paid
50. 06/14/91	conducting trip without proper patch & repair kit	paid
51. 06/07/91	conducting a trip without enough proper PFDs	nolo contendere
52. 09/02/90	failure to maintain guide records	paid
53. 08/17/90	inadequate guide records	paid
54. 08/06/90	failure to maintain guide qualification records	paid
55. 08/01/90	failure to maintain guide records	paid
56. 07/31/90	failure to report boat accident within 5 days	paid
57. 07/30/90	failure to report boat accident within 5 days	paid
58. 06/18/90	operating a trip without PFDs fastened	paid
59. 09/29/89	maintaining inadequate guide qualification records	went to court - guilty plea
60. 09/01/89	failure to register and number a motorized commercial river raft	paid
61. 08/27/89	failure to maintain guide training records	paid
62. 08/13/89	operating a commercial trip without PFDs properly fastened	paid
63. 08/02/89	failure to maintain current and permanent record of current guides	paid
64. 07/22/89	operating commercial trip without an airpump	paid
65. 07/16/89	failure to maintain guide qualification records	paid
64. 07/02/89	operating trip with an inappropriate sized PFD	went to court - guilty plea

65. 08/19/88	operated trip with unqualified guide	paid
66. 08/15/88	failure to maintain current guide records	paid
67. 08/15/88	failure to maintain guide records	paid
68. 08/13/88	operating without enough PFDs	went to court - guilty plea
69. 08/03/88	operating with unqualified guide	paid
70. 07/30/88	operating trip without proper first-aid kit	paid
71. 07/28/88	failure to maintain guide records	paid
72. 07/28/88	failure to maintain guide records	paid
73. 07/24/88	failure to maintain guide records	paid
74. 07/24/88	failure to maintain guide records	paid
75. 07/21/88	failure to maintain guide records	paid
76. 07/21/88	failure to maintain guide records	paid
77. 07/18/88	failure to maintain records	paid
78. 07/18/88	failure to maintain current guide records	paid
79. 07/18/88	failure to maintain guide records	paid
80. 07/17/88	failure to maintain guide records	nolo contendere
81. 07/17/88	failure to maintain current guide or instructors records	paid
82. 07/16/88	failure to maintain guide records	paid
83. 07/14/88	failure to maintain guide records	paid
84. 07/14/88	failure to maintain guide records	went to court - guilty plea
85. 07/10/88	failure to securely fasten PFD during commercial trip	deferred judgement
86. 07/09/88	operating a trip without enough proper PFDs	went to court - guilty plea
87. 07/09/88	vessel marking	paid
88. 07/03/88	failure to secure PFD during commercial trip	paid
89. 07/02/88	failure to maintain guide records	paid
90. 07/02/88	failure to maintain guide records	paid
91. 06/23/88	exceeded load limit of raft	dismissed
92. 06/20/88	operating a trip without proper patch and repair kit	went to court - guilty plea
93. 06/12/88	operating trip without an air pump	deferred judgement
94. 06/10/88	operating a trip without a proper throwbag	paid

***PFD = Personal Flotation Device**

APPENDIX C

RIVER CLASSIFICATION

Nearly every whitewater river in the United States is mapped, and the rapids on many of them are rated. In this system a number is assigned to indicate difficulty of passage - the higher the number, the tougher the water. Rivers have long been classified on an International Scale of difficulty ranging from I to VI. This system, like other human institutions, suffers from the fact that it has to be interpreted. What looks like Class V (exceedingly difficult) as you approach it and hear its roar may seem like Class III (difficult) after one has run the river successfully. The following discussion details the six difficulty classes of whitewater.

Class I - Easy. Little gradient, wide and unobstructed channels. Moving water with a few riffles and small waves. Risk to swimmers is slight; self rescue is easy.

Class II- Novice. Straightforward rapids with wide, clear channels which are evident without scouting. Low ledges and rapids of moderate difficulty with wide passages. Waves up to two feet and easy rapids. Easily discerned channels for paddling with some maneuvering; beginning or intermediate paddler. Swimmers are seldom injured and group assistance, while helpful, is seldom needed.

Class III - Intermediate. Rapids with moderate, irregular waves that can swamp canoes. Water of medium difficulty. Complex maneuvers in fast current and good boat control in tight passages or around ledges are often required. Large waves and strainers may be present but are easily avoided. Strong eddies and powerful current effects can be found, particularly on large-volume rivers. Scouting is advised, especially on the first run. Injuries while swimming are rare; self rescue is usually easy but group assistance may be required to avoid long swims.

Class IV - Advanced. Lengthy and very difficult rapids, with obstructed passages requiring plenty of expert maneuvering. The rapids are long with large unavoidable waves and holes or constricted passages. Very turbulent waters. Lots of turns and drops in the river. Scouting for passage is necessary. Risk of injury to swimmers is moderate to high, and water conditions may make self-rescue difficult. Rescue may be difficult.

Class V - Expert. Extremely long, obstructed or very violent rapids spattered with dangerous rocks and more dangerous holes. Rapids may continue for long distances between pools, demanding a high level of fitness. What eddies exist may be small, turbulent or difficult to reach. Waves over five feet and irregular, with high flow and high gradient. Scouting is mandatory but often difficult. Swims are dangerous, and rescue is difficult even for experts. A very reliable eskimo roll, proper equipment, extensive experience, and practiced rescue skills are essential for survival.

Class VI - Extreme. Ranges from Class V rapids to unnavigable. Very dangerous, hazardous, and for teams of experts only. Sometimes called the "class of unnavigable water" and to be taken at risk of life.

Compiled from
Exciting River Running in the U.S., by Elizabeth Medes, 1979
Appalachian Mountain Club, River Rescue, 1985
Colorado Whitewater Association, 1991 Schedule Roster
American River Management Society, River Information Digest 1992

APPENDIX D

COMMENTS OF LICENSED RIVER OUTFITTERS FROM 1992 SURVEY

- * **Advanced first aid requirements or equivalent are needed for trip leaders.**
- * **Minimum of six trips or equivalent experience is needed to guide the difficult sections of river.**
- * **Input all guides and qualifications into computerized data base (i.e. include CPR, first aid, guide logs, etc.). Consequently, there would be no need to check guide's qualifications, especially since guides rotate from one outfitter to another.**
- * **Mandate outfitters equipment helmets, self bailers, wetsuits, etc.**
- * **Repair kit information is too strict.**
- * **Conflict with ducky regulations - need to be redefined.**
- * **Number of inspections per permit holder should correlate with number of user days.**
- * **River miles have been taken away for no reason in addition to unnecessary harassment by AHRA.**
- * **A cap should remain on the number of outfitters.**
- * **Requirement for spare PFDs is based on old lifejackets that popped on trip.**
- * **More specific training in water rescue needed for guides navigating Class 4,5, and 6 rivers.**
- * **Accident reporting form requests outfitter to place blame and this is not fair.**
- * **Trains, planes, and buses don't have to record names, addresses, etc. for every passenger and then have a regulatory agent check to see your files and your expense and time every year.**
- * **CPR is ridiculous - it changes every year, burdensome time and money consuming.**
- * **An extra paddle on each boat and a spare life jacket per trip is costly, dangerous and worthless for half day and full day trips. People fall on extra paddle and break bones.**
- * **At present all trips require the same equipment. Day trips require the same equipment as a multi-day trip. Example: having a spare pump on day trip or a repair kit on day trip is unnecessary. It makes the trip no safer and is never used.**

- * **The original purpose of this regulation was to tax the commercial entities so that a police force could be established to regulate private and commercial entities; little or nothing has been done to assure that private rafters comply with basic whitewater safety measures.**
- * **The deadline for the application process should be extended at least two months without suffering a penalty.**
- * **I would like to see a master guide category that would allow for less familiarity with a given river. If someone has been on many rivers for 10-20 years, the experience gained is easily and safely transferred to other rivers.**
- * **It takes two personnel two months to complete the required paperwork.**
- * **Advanced first aid or higher river rescue on Class IV and V rivers.**
- * **Guides should be certified as in Utah.**
- * **Class IV and V river users should have swiftwater rescue technician certification.**
- * **To be a trip leader on Class IV and V rivers, one should have a minimum of 1500 river miles. Also, upgrade first aid requirements to a minimum of advanced first aid or equivalent.**

APPENDIX E

1992 SURVEY OF LICENSED RIVER OUTFITTERS TOTAL 79 RESPONSES

1. How long have you been an outfitter in Colorado?

Ten years or more -- 39	53%	
Five to ten years -- 18		24%
Five years or less -- 17	23%	

2. How many guides do you employ in a typical season?

One to five -- 17	23%	
Five to ten -- 15	20%	
More than ten -- 42		57%

3. Is there much turnover for staff in a single season?

Yes -- 6	8%	
No -- 67	92%	

4. Approximately what percent of your guides have worked for you two or more seasons?

0 -- 1		1%
20-40% -- 9		13%
50% -- 11	15%	
60-70% -- 13		18%
75-85%	30%	
90-100%	23%	

5. Based on your interactions, if any, with the Division of Parks and Outdoor Recreation, please rate their overall performance.

Excellent -- 14		19%
Very good -- 30	42%	
Good -- 17		24%
Average -- 5		7%
Below Average -- 2		3%
Poor -- 4	5%	

6. It is generally agreed in the whitewater rafting community that Class IV, V and Class VI portions of rivers require special skills and experience. Under current Colorado law (33-32-105.5, C.R.S.) the minimum qualifications for guides and trip leaders are the same for everyone. Do you believe that there should be additional qualifications required by law for those guides who lead trips in Class IV, V and VI waters?

Yes -- 41	56%	
No -- 32	44%	

7. In the past several years, have you noticed a substantial increase in the number of commercial rafting trips on Colorado waters?

Yes -- 50	77%
No -- 15	23%

8. In your opinion, how would you rate the current level of state regulation (laws, rules and regulations) affecting river outfitters?

Burdensome regulation -- 24	32%
Adequate -- 48	65%
Under-regulated -- 2	3%

9. Please indicate any changes you would recommend in the following areas:

Application process -- 10	15%
Minimum qualifications for guides -- 21	31%
Required equipment -- 14	21%
Record keeping requirements -- 18	27%
Accident reporting requirements -- 4	6%

10. Based on your interaction with "river rangers" (Park personnel), if any, please check ALL relevant responses.

Informative -- 42	20%
Cooperative -- 49	24%
Experienced -- 36	17%
Pleasant -- 48	23%
Available -- 15	7%
Unavailable -- 5	2%
Unreasonable -- 8	4%
Rude -- 7	3%

11. Does your company allow children under the age of 10 years to participate in a whitewater rafting expedition?

Yes -- 56	80%
No -- 14	20%

