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Colorado Department of Regulatory Agencies
Office of Policy and Research

River Outfitter Licensing Program



October 15, 2003

STATE OF COLORADO

DEPARTMENT OF REGULATORY AGENCIES

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Bill Owens
Governor

October 15, 2003

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

Dear Members of the General Assembly:

The Colorado Department of Regulatory Agencies has completed its evaluation of the river outfitter licensing program. I am pleased to submit this written report, which will be the basis for my office's oral testimony before the 2004 legislative committee of reference. The report is submitted pursuant to section 24-34-104(9)(b), of the Colorado Revised Statutes (C.R.S.), which states in part:

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

The department of regulatory agencies shall submit a report and supporting materials to the office of legislative legal services no later than October 15 of the year preceding the date established for termination....

The report discusses the question of whether there is a need for the regulation provided under Article 32 of Title 33, C.R.S. The report also discusses the effectiveness of the Division of Parks and Outdoor Recreation and staff in carrying out the intent of the statutes and makes recommendations for statutory changes in the event this regulatory program is continued by the General Assembly.

Sincerely,

A handwritten signature in black ink that reads "Richard F. O'Donnell".

Richard F. O'Donnell
Executive Director

2003 Sunset Review Colorado River Outfitter Licensing Program

Department of Regulatory
Agencies

Bill Owens
Governor

Richard F. O'Donnell
Executive Director



EXECUTIVE SUMMARY

Quick Facts

What is Regulated? The Division of Parks and Outdoor Recreation administers and enforces the regulation of river outfitters, guides, trip leaders, and guide instructors. The oversight of these entities assures that licensed river outfitters meet and maintain minimum standards of safety for equipment and guides.

Who is Regulated?

- 171 river outfitters

How is it Regulated? The five-member Board of Parks and Outdoor Recreation consists of one member appointed from the state at large and the remaining four members represent the north, south, west, and metro regions of the state. The Board is responsible for promulgating rules for the regulation of river outfitters. The Director of the Division of Parks and Outdoor Recreation is authorized to grant variances from the regulations on a case-by-case basis provided the public will not be endangered by the variance. Both the Division and the Board are located in the Department of Natural Resources.

What Does it Cost? In 2003, license costs were:

	New License	Renewal
River Outfitters	\$400	\$400
Limited Use	\$100	\$100

What Disciplinary Activity is There? During the five year period 1998-2002, the Board's disciplinary proceedings consisted of:

Revocations	0
Suspensions	0
Probation	21
Letters of Admonition	6
Cease & Desist	1

Where Do I Get the Full Report? The full sunset review can be found on the internet at:

www.dora.state.co.us/opr/2003RiverOutfitters.pdf

Key Recommendations

Continue the Regulation of River Outfitters until 2015

The present regulatory program 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.

Amend disciplinary actions to include a river outfitter or guide under the influence of alcohol or any controlled substance

The Division currently has the authority to impose the penalty of a class 1 misdemeanor on any person who violates provisions of the act that address operating a vessel while under the control of alcohol or any controlled substance. However, there is no existing condition in the statute that provides for an administrative penalty, such as a denial, suspension, or revocation, for such a violation.

**Major Contacts Made in Researching the 2003 Sunset Review of the River
Outfitter Licensing Program**

Staff of the Division of Parks & Outdoor Recreation
Colorado River Outfitters Association
U.S. Bureau of Land Management (Colorado Office)
Utah Division of Parks and Recreation
Idaho Outfitters and Guides Licensing Board
Wyoming Parks and Recreation
Arizona Parks and Recreation
U.S. Forest Service

What is a Sunset Review?

A sunset review is a periodic assessment of state boards, programs, and functions to determine whether or not they should be continued by the legislature. Sunset reviews focus on creating the least restrictive form of regulation consistent with the public interest. In formulating recommendations, sunset reviews consider the public's right to consistent, high quality professional or occupational services and the rights of businesses to exist and thrive in a highly competitive market, free from unfair, costly or unnecessary regulation.

Sunset Reviews are Prepared By:
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Table of Contents

BACKGROUND	1
<i>The Sunset Process</i>	<i>1</i>
<i>Methodology.....</i>	<i>1</i>
<i>Profile of the Profession.....</i>	<i>1</i>
<i>History of Regulation</i>	<i>2</i>
LEGAL FRAMEWORK.....	4
<i>Federal Regulation.....</i>	<i>4</i>
<i>Colorado Regulation.....</i>	<i>5</i>
<i>Local Regulation</i>	<i>6</i>
<i>Review of Rules and Regulations</i>	<i>6</i>
<i>Other States Regulation</i>	<i>7</i>
PROGRAM DESCRIPTION AND ADMINISTRATION	8
<i>Licensing</i>	<i>8</i>
<i>Inspections.....</i>	<i>8</i>
<i>Accident and Incident Reporting.....</i>	<i>9</i>
<i>Accident and Death Investigations.....</i>	<i>10</i>
<i>Complaints/Disciplinary Actions.....</i>	<i>11</i>
ANALYSIS AND RECOMMENDATIONS	12
<i>Recommendation 1 – Continue the regulation of river outfitters by the Board of Parks and Outdoor Recreation until 2015.</i>	<i>12</i>
<i>Recommendation 2 – Amend disciplinary action section 33-32-109, C.R.S., to include a river outfitter or guide under the influence of alcohol or any controlled substance.</i>	<i>13</i>
APPENDIX A – SUNSET STATUTORY EVALUATION CRITERIA.....	14
APPENDIX B – RIVER OUTFITTER RECORDS AND RIVER SAFETY INSPECTION FORMS	15

Background

The Sunset Process

The regulatory functions of the river outfitter licensing program (Program) in accordance with Article 32 of Title 33, Colorado Revised Statutes (C.R.S.), shall terminate on July 1, 2004, unless continued by the General Assembly. During the year prior to this date, it is the duty of the Department of Regulatory Agencies (DORA) to conduct an analysis and evaluation of the program pursuant to section 24-34-104(9)(b), C.R.S.

The purpose of this review is to determine whether the regulation of river outfitters should be continued for the protection of the public and to evaluate the performance of the Board of Parks and Outdoor Recreation (Board) and staff of the Department of Natural Resources, Division of Parks and Outdoor Recreation (Division). During this review, the Board must demonstrate that there is still a need for the regulation and that the regulation is the least restrictive regulation consistent with the public interest. DORA's findings and recommendations are submitted via this report to the legislative committee of reference of the Colorado General Assembly. Statutory criteria used in sunset reviews may be found in Appendix A on page 14.

Methodology

As part of this review, DORA interviewed staff, reviewed complaint and disciplinary actions, surveyed licensees, reviewed Colorado statutes and rules, and reviewed the laws of other states.

Profile of the Profession

River outfitters specialize in leading excursions and navigating rivers in numerous river systems in Colorado. These excursions, often referred to as river running, use a variety of approved boats, rafts, or other vessels. The relative difficulty of these trips may vary from casual float trips to extreme whitewater rafting. Some trips involve the paddling of the vessel by passengers as well as the guide(s). Participants may choose a trip as brief as a few hours in duration to multi-day trips. Equipment such as wetsuits, slickers, camping gear, meals and transportation to and from the drop-off point may be included in some packages. In addition to river running, many outfitters offer combination packages that involve other activities such as fishing, whitewater kayaking, hiking, mountain biking, camping, and horseback riding.

River trips are rated for difficulty and challenge using the International Rapid Rating Scale, which identifies six classes of rivers. Outfitters are responsible for ensuring that participants on each trip have the appropriate skills for the level of difficulty and that guides on the trip have the qualifications necessary to safely navigate the water.

In addition to obtaining a license from the Division, river outfitters may also have to obtain permits from federal agencies such as the U.S. Forest Service (USFS), the National Park Service (NPS), or the U.S. Bureau of Land Management (BLM) if operating on land under the jurisdiction of such agencies.

According to Colorado River Outfitters Association (CROA), the growth in the number of commercial river rafting trips ranged from 4.4 percent to 23.1 percent from 1988 through 1998. In 2001, an estimated 523,500 people participated in commercial rafting trips in Colorado, representing less than a one percent increase over 2000. In 2002, commercial river rafting trips declined by an additional 39 percent. This is generally attributed to dry conditions in the West, low water flows, and wildfires.

History of Regulation

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.

Prior to 1984, when the General Assembly imposed safety regulations on river outfitters, Colorado had no restrictions or standards that 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 of the rivers in Colorado. The Division 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, the Division had a staff of only two persons for the enforcement of the statewide program.

At that time, different stretches of rivers in Colorado were under the control of different agencies. The BLM issued permits on some rivers, but that agency's authority was limited in Colorado. Other stretches of river were under the control of the NPS, USFS and county sheriffs in Colorado. The BLM and USFS confirmed that they did not have the authority to control on-the-water recreational activity, only those that occurred on their lands. As a result, anyone with access to an inflatable raft could become a river outfitter in Colorado, regardless of experience in river running or first aid.

In the early 1980s, several serious incidents and three deaths involving commercial passengers occurred in Colorado prompting 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 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 it was alleged that commercial companies were using inexperienced guides who had no experience on the river at high levels of stream flow. In addition, the Division logged five serious passenger complaints that year concerning outfitter carelessness, recklessness, negligence, and use of unsafe equipment.

Seeking consistent regulation and the establishment of minimum safety standards, CROA, a trade organization formed in 1980 by Colorado commercial river outfitters, undertook a formalized effort to implement a state licensing program. The Program was established by the General Assembly in 1984 and the Board was directed to regulate river outfitters. The Board, with the consent of the Executive Director of the Department of Natural Resources, appoints the Director of the Division (§ 33-10-103(1), C.R.S.). The Division was designated to be the agency that would provide regulatory oversight of licensed river outfitters in Colorado.

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

Changes in 1994 were a result of recommendations made in the 1993 sunset review. The amended law granted the Director of the Division the authority to grant variances to river outfitters on a case-by-case basis if the Director determines that the health, safety, and welfare of the public is not endangered. Furthermore, provisions were added that prohibit any river outfitter or guide from operating or maintaining a vessel or allowing any person from operating or maintaining a vessel while under the influence of alcohol or any controlled substance. Finally, the Division was given the authority to issue cease and desist orders, and the Board was granted the authority to issue letters of admonition and to place licensed river outfitters on probation.

DORA also made an administrative recommendation to repeal all river outfitter rules and regulations and promulgate new ones. Segments of the rules exceeded statutory authority. To assist the Board in developing rules, the General Assembly created a three member advisory committee (Committee) that consisted of two members representing river outfitters and one member representing the Division. The Committee met three times during the fall of 1994 and winter of 1995 and made recommendations for new regulations to the Board. The Committee convened one additional time in 1997 to provide input on a change in the insurance requirements. In 2000, the Committee was sunset as scheduled in the enabling legislation and as recommended by DORA in the 1999 Sunset Review of the River Outfitters Advisory Committee.

Legal Framework

Federal Regulation

River outfitters launching from federal lands must obtain the appropriate permit from the overseeing agency, which allows the outfitter to use federal land for commercial purposes in exchange for a fee. The criteria for the issuance of a permit vary slightly from agency to agency.

Federal agencies such as the U.S. Bureau of Land Management (BLM), U.S. Forest Service (USFS), and the National Park Service (NPS) evaluate land usage on a particular stretch of river before issuing a permit. One of the purposes of the federal permit process is to manage the impact of public usage by managing the number of trips and the size of the groups using a particular stretch of river.

Federal agencies also require river outfitters to demonstrate proof of licensure from the appropriate state agency before issuing a permit. Fees for federal permits are based on a percentage of revenues. Federal agencies perform frequent spot checks of river outfitters in launching areas to ensure compliance with safety protocols, such as life vests and safety orientation. All federal agencies require proof of liability insurance before issuing a permit. The USFS also requires guides to have first aid and cardiopulmonary resuscitation (CPR) training.

According to industry sources, the Arkansas River from Leadville to Pueblo (known as the Arkansas Headwaters Recreation Area (AHRA)) is considered one of the premier rafting rivers in the country and has the highest usage in the state. This stretch of river is regulated through a partnership between the BLM and the Colorado Division of Parks and Outdoor Recreation (Division).

The Division 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 Division 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 fees collected are used for management and development of public lands along the Arkansas River);
- coordinating river use as specified by the BLM; and,
- enforcing state laws such as safety, littering, resource protection, and public conduct within the AHRA.

The primary responsibilities of the BLM include:

- managing all non-recreation resources in the corridor;
- participating in and reviewing the recreation management plan, including allotment and rationing of river use;
- monitoring use to assess environmental effects and to identify mitigating measures; and,
- monitoring impacts to Wilderness Study Areas, wildlife and fisheries, and other impacts related to site development.

Colorado Regulation

Article 32 of Title 33 of the Colorado Revised Statutes (C.R.S.), provides for the licensing of river outfitters, and the regulation of river outfitters, guides, trip leaders, and guide instructors in Colorado. A regulated trip is defined as any river trip for which the services of river running have been advertised, or for which a fee was charged regardless of whether the fee is part of a packaged trip, recreational excursion, camp, monetary profit, or to offset actual costs of the trip. The statute defines terms used in the regulation of river outfitters and authorizes the Board of Parks and Outdoor Recreation (Board) in the Department of Natural Resources to promulgate rules for the regulation of river outfitters. The Director of the Division is authorized to grant variances from the regulations on a case-by-case basis provided the public will not be endangered by the variance.

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 section 33-10-105, C.R.S. 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. The Board may deny, suspend and revoke any river outfitter license, and place on probation, and issue a letter of admonition to any outfitter, for violations of the statute or rules. All disciplinary actions are subject to the due process requirements of the Administrative Procedure Act.

No person may act as an outfitter or advertise as one without a Board issued license. The fee for the license is established at a level sufficient to cover the direct and indirect expenses for the program including licensing, inspections, and enforcement. All fees are deposited into the River Outfitters Cash Fund and are subject to appropriation by the General Assembly. To be licensed by the Board, an individual or business entity must be authorized to do business in the state, submit evidence of liability insurance in the amount of \$300,000, and meet the safety standards established by the Board through the promulgation of rules.

The statute establishes minimum requirements for guides, trip leaders, and guide instructors. Outfitters are required to employ or contract with qualified guides and trip leaders for all river outfitter activities. Outfitters are required to provide and use equipment approved by the Board to promote safety for rafting participants. It is a class 2 misdemeanor to operate as an outfitter without a license. Guides and trip leaders who violate the safety equipment standards of the Board are subject to a \$100-fine, except that failure to provide the required floatation device is a class 3 misdemeanor. Operating a vessel in a careless manner is a class 3 misdemeanor and willful disregard for the safety of passengers is a class 2 misdemeanor. Operating a vessel under the influence of alcohol or controlled substance or allowing the vessel to be operated by someone under the influence of alcohol or a controlled substance is a class 1 misdemeanor.

Every peace officer, enumerated in section 33-32-108(1)(b), C.R.S., is authorized to enforce any provision of the statute or the rules promulgated by the Board. Expenses for any governmental entity conducting search and rescue operations resulting from the actions of a river outfitter are subject to reimbursement by the outfitter, and the statute provides a distribution formula for such reimbursements.

Local Regulation

The statute allows for enforcement by any peace officer enumerated in section 33-32-108(1)(b), C.R.S. This includes Parks and Recreation or Division of Wildlife officers, county sheriffs, and city and county law enforcement personnel. It is rare for local law enforcement officers to become involved in an investigation or enforcement action unless it is precipitated by an accident involving serious injury or death.

Review of Rules and Regulations

The Board has promulgated several rules to augment its statutory authority to regulate river outfitters. These rules address several broad areas including basic orientation for passengers; trip log record keeping requirements; and, minimum qualifications for guides, instructors, and trip leaders. These rules address such issues as minimum number of hours required for on-river training utilizing certain equipment; specific areas of instruction such as river hazards, river rescue, and river currents; and, experience required prior to guiding a regulated trip.

The rules also pertain to safety and health standards for commercial rafting trips that address drinking water and sanitation, personal flotation devices, vessels and equipment, and vessel loading capacity. Other rules concern the operation of licensees with respect to maintenance of qualification records for employees and accident reporting requirements.

Other States Regulation

The licensing and regulation of river outfitters in other states is conducted by a variety of state agencies. These include state marine boards, departments of commerce, boards of outfitters and guides, and bureaus of state parks. In the Rocky Mountain region, Colorado, Idaho, and Utah have state licensing programs; however, the requirements for licensure vary. While a written examination is not a condition for licensure in Colorado, Utah requires that applicants take an examination. Guide requirements vary in the Rocky Mountain 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. In Wyoming and Montana, there are no state regulatory programs, thus the permitting process by federal agencies is the only government oversight. Table 1 summarizes the requirements for Colorado, Idaho and Utah.

Table 1
Comparison of River Outfitting Regulation

State & Agency	Fee	Examination Required	Liability Insurance	Bond Required	License Types	Qualifications
Colorado Division of Parks and Outdoor Recreation	Company: \$400 Limited Use: \$100	None	\$300,000 combined single limit for property damage and bodily injury	None	Company	<u>River Outfitter:</u> Minimum liability insurance, comply with safety standards determined by Board. <u>Guide:</u> 18 years of age, 50 hours on the river, First Aid and CPR certified. <u>Trip Leader:</u> 18 years of age, 500 river hours as a qualified guide, First Aid and CPR certified.
Idaho Outfitters and Guides Licensing Board	Company \$300 Guides \$95	None	None	\$10,000	Company Boatman Float Boat Guide Float Boatman	<u>River Outfitters & Guides:</u> 18 years of age, First Aid and extensive, first hand knowledge of the area and waters where operations are conducted.
Utah Division of Parks and Recreation	Company \$200 Guides \$20-\$40	Written	None	None	Company Guide 1-4	<u>River Outfitter:</u> 18 years of age, First Aide, CPR, pass written examination and 80 hours of experience operating a vessel within last 10 years, at least 20 of which were in a type of vessel used in current operations. <u>Guide 1:</u> 18 years of age, Emergency Response First Aid, and experience on at least nine whitewater sections within last 10 years. <u>Guide 2:</u> 18 years of age, Emergency Response First Aid, and experience on at least six river sections within last 10 years. <u>Guide 3:</u> 18 years of age, Standard First Aid, and experience on at least three whitewater sections within last 10 years. <u>Guide 4:</u> 18 years of age, Standard First Aid, and experience on at least three river sections within last 10 years.

Program Description and Administration

The Board of Parks and Outdoor Recreation (Board) is responsible for promulgating regulations to govern river outfitters, guides, trip leaders, and guide instructors to ensure the safety of river running activities. The Division of Parks and Outdoor Recreation (Division), through its Enforcement Section, provides regulatory oversight of licensed river outfitters in Colorado. Activities of the program include verification of continued minimum insurance coverage, inspection of commercial vessels and associated safety equipment, inspection of river outfitter records, investigation of complaints, and investigation of commercial vessel accidents. The Division is also responsible for providing river ranger patrols on rivers throughout the state to monitor the activities of river outfitters, to enforce the provisions of the statutes and regulations, and to assist in river search and rescue activities as needed.

Licensing

Section 33-32-104, of the Colorado Revised Statutes (C.R.S.), provides that, upon application for a river outfitter license, payment of a fee determined by the Board, provision of evidence of liability insurance, and fulfillment of minimum qualifications, a river outfitter license will be issued. Fees are established annually to cash fund administrative expenses for the river outfitter licensing and enforcement program. The fee is currently \$400 for both an original and renewal license and \$100 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 number of licensees increased steadily from 125 in 1985 to a high of 185 in 2001. In 2002, the drought and resulting lower water levels in rivers created a decline in the number of rafting trips and a corresponding decline in the number of new applicants. Table 2 below details the licenses issued over the past five calendar years.

Table 2
Colorado Licensed Outfitters 1998-2002

	1998	1999	2000	2001	2002
Renewals	149	155	167	164	164
New Applicants	20	19	15	21	7
Ceased Operations	8	13	8	18	22
Total Licensed	169	174	182	185	171

Inspections

Enforcement of the river outfitter statutes and regulations is primarily accomplished by Division officers serving on statewide river ranger team and the Arkansas Headwaters Recreation Area. Primarily, statewide "river ranger" teams, comprise state park employees specializing in water recreation safety enforcement.

Typically, river rangers will conduct a safety inspection at launch points to allow commercial rafters to correct any deficiencies prior to entering the water. Rangers complete a river safety inspection form that contains a checklist to verify that the trip meets the minimum standards for equipment, guides, and trip leaders; customer orientation; and, operational safety. Rangers carry additional equipment that can be loaned to the licensed outfitter, enabling a trip to proceed that might otherwise be delayed or canceled. If a safety violation is found, a warning may be issued. River rangers may also stop a river trip while it is on the water and perform a safety inspection. Violations noted either during or at the conclusion of a trip usually result in a citation. Citations are similar to traffic tickets as they usually involve payment of a fine to the local court. Individuals receiving citations may appeal the citation/fine to the court. Because citations are tracked by violation code, rather than by regulatory program, the Division reports all citation disposition information in the aggregate rather than by program.

National Park Service and U.S. Forest Service rangers conduct similar inspections at launch points within their respective jurisdictions.

Licensed river outfitters are also subject to routine office records inspections by the Division. The Division conducts these inspections to determine compliance with guide training and documentation requirements. Record inspections often require many hours to complete. The Division reports that almost 38 percent of all river outfitter licensing violations are related to inadequate record keeping. Copies of an office records inspection form and a river safety inspection form and are included in this report as Appendix B on page 15.

Accident and Incident Reporting

Rule 307 of the 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, passengers, guides, or trip leaders. The full report of the accident involving any death, injury, or disappearance must be submitted to the Division within five days of the date of the accident. Licensed river outfitters are required to immediately report any death or injury or disappearance of any customer to the law enforcement agency having jurisdiction, which is usually the county sheriff. All other reportable boat accidents must be reported to the Division within 10 days.

The rules require that an accident report 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 of the water flow 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.

The Division categorizes river accidents as follows: collision with vessel, falls overboard, fixed object impact, falls in boat, and capsized boats.

Accident and Death Investigations

In the event of a death or serious injury, the Division contacts the appropriate ranger team to investigate the incident. If an incident occurs on the Arkansas River, the Arkansas Headwaters Recreation Area is immediately contacted and it proceeds with an investigation. If an incident occurs on any other river in Colorado, the Division contacts the statewide ranger team. 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. A 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.

After the accident, the Division 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 incident.

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 outfitter was in any way responsible, the Division has the authority and may proceed to order a cessation of river outfitter operations relevant to the accident. Formal disciplinary proceedings follow with the possibility of suspension or revocation of the license.

Table 3 below illustrates enforcement activity during the past five calendar years.

**Table 3
River Outfitter Enforcement Activity**

	1998	1999	2000	2001	2002
River Trip Contacts	2,327	2,256	2,211	2,150	1,797
Office Records Inspections	77	63	48	49	67
River Safety Inspections	262	224	233	388	331
River Assists	269	121	300	242	296
Warnings	154	120	118	99	100
Citations Issued	39	40	22	24	36
Accidents Investigated	91	76	86	70	33

Complaints/Disciplinary Actions

The Division is charged with handling all complaints against licensed river outfitters or outfitters operating without a license. The Division reports that there are few consumer complaints against licensed outfitters. There are two to three complaints each year regarding river outfitting without a license, which are usually filed by licensed river outfitters. Upon investigation, these are generally identified as private trips, which do not require licensure. The Division reports that there have been only two cases of commercial river outfitters operating without a license in the past six years.

Historically, the Board has taken few disciplinary actions. Disciplinary actions have dropped significantly from 2000 to 2002. Division staff credits this to the addition of a second river ranger team that provides more visibility on the rivers and acts as a deterrent to violations. The low volume of river traffic during this period may also have contributed to the decline in disciplinary actions. Table 4 details disciplinary actions for the past five calendar years.

**Table 4
River Outfitters Disciplinary Actions**

Action	1998	1999	2000	2001	2002
Denial	0	2	0	0	0
Suspension	0	0	0	0	0
Revocation	0	0	0	0	0
Probation	2	2	2	2	1
Letter of Admonition	4	0	1	0	0
Cease & Desist	1	0	1	0	0

Analysis and Recommendations

Recommendation 1 – Continue the regulation of river outfitters by the Board of Parks and Outdoor Recreation until 2015.

Increasing numbers of both residents and nonresidents make recreational use 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 resulting in hypothermia, injuries from floating debris or rocks, or death by drowning.

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 accomplish this, Article 32 of Title 33 seeks to ensure the competence of trip guides and trip leaders by requiring specific standards for experience. In addition, the enforcement program for river outfitters is responsible for inspections of records and safety equipment, investigations of complaints and accidents, and search and rescue operations.

The licensing of river outfitters was established to assure that all licensed 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 Division of Parks and Outdoor Recreation's (Division) river outfitting licensing program. Were regulation to cease, river outfitters might reduce the standards for guide qualifications and safety equipment.

According to the Colorado River Outfitters Association, 523,500 persons participated in commercial boating in 2001. 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.

On the other hand, a number of licensees feel the program should be repealed primarily because of the amount of federal regulation. Similarly, some licensees report that Colorado's fees are excessive and have a negative impact on small business, especially those who operate only a few trips each year.

Taken on balance, however, the program appears to meet the goals established by the General Assembly in creating a safer river outfitter industry in Colorado.

Recommendation 2 – Amend disciplinary action section 33-32-109, C.R.S., to include a river outfitter or guide under the influence of alcohol or any controlled substance.

The purpose of regulation is to protect the public. Operating a vessel while under the influence of alcohol or a controlled substance represents an obvious risk to public safety. Therefore, it is reasonable to conclude that regulatory bodies should have the ability to prevent such conduct and to discipline those under their jurisdiction who engage in such conduct.

The Division currently has the authority to impose the penalty of a class 1 misdemeanor on any person who violates section 33-32-107(4), C.R.S., which addresses operating a vessel while under the control of alcohol or any controlled substance.

Whereas most regulatory licensing programs possess the authority to impose administrative sanctions, the river outfitter statute does not provide for an administrative penalty for this type of violation. There are several reasons why such statutory authority is necessary. For example, because it generally takes less time to move a case through the administrative process than it does through the criminal process, potentially violative conduct can be stopped more quickly. This helps to reduce the likelihood of additional harm and/or risk to public safety. Additionally, the burden of proof is lower in the administrative arena, thus further enhancing the public protection aspect of the program.

The revised language should read as follows:

33-32-109. Denial, suspension, or revocation of license – disciplinary actions. (1) The board may deny, suspend, or revoke a river outfitter license, place a licensed river outfitter on probation, or issue a letter of admonition to a licensed river outfitter if the applicant or holder:

(h) OPERATES OR MAINTAINS PHYSICAL CONTROL OF OR ALLOWS ANY OTHER PERSON TO OPERATE OR MAINTAIN PHYSICAL CONTROL OF A VESSEL ON A REGULATED TRIP IF SUCH RIVER OUTFITTER, GUIDE, OR PERSON IS UNDER THE INFLUENCE OF ALCOHOL OR ANY CONTROLLED SUBSTANCE OR ANY COMBINATION THEREOF, AS SPECIFIED IN SECTION 33-13-108.1.

Appendix A – Sunset Statutory Evaluation Criteria

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

**COLORADO STATE PARKS
RIVER OUTFITTER LICENSING PROGRAM**

RIVER SAFETY INSPECTION

Business Name _____ License Number _____ 1/2 Day Day Overnight Training

Address _____ Telephone Number _____ Number of Boats _____

City _____ State _____ Zip _____ Trip Leader _____

Date _____ Time _____ Location _____ Put-in On-River Take-out Ranger(s) _____

VESSEL CONDITION	NOTES	GUIDES
___ VESSEL MARKING (min. 4")		
___ VESSEL I.D. (owner's name, address etc.)		
___ VESSEL CONSTRUCTION		
REQUIRED PER VESSEL		
___ OARS (2 plus spare)		
___ PADDLES (one spare for each boat)		
___ BAILING DEVICE (adequate for boat)		
___ BOW & STERN LINE (min. 10 feet)		
___ LINES SECURED (to prevent entanglement)		
REQUIRED PER TRIP		
___ FIRST-AID KIT (clean & dry in suitable container)		
___ Adhesive Bandages ___ First-Aid Tape		
___ Sterile Pads ___ Antiseptic		
___ Roller Gauze ___ Triangle Bandages		
___ THROW-BAG (min. 50 feet of 3/8" rope readily available)		
___ AIR PUMP (inflatables only)		
___ REPAIR KIT (serviceable condition in durable container)		
___ Patches ___ Glue		
PERSONAL FLOTATION DEVICES		
___ SUFFICIENT NUMBER (passengers & guides)		
___ SPARES AVAILABLE/SERVICEABLE (Type I or Type V Whitewater or		
___ PROPER TYPE Type II with crotch-strap & collar for children 50 Lbs and below.)		
___ PROPER SIZE FOR INDIVIDUAL FIT		
___ GOOD / SERVICEABLE CONDITION		
___ SECURELY FASTENED		
ON-RIVER PROCEDURES		
___ DRINKING WATER (clean containers/purification procedures)		
___ PROPER TRASH DISPOSAL/FIRE PANS		
___ HUMAN WASTE CONTAINERS		
SAFETY PROCEDURES		
___ ADEQUATE PASSENGER ORIENTATION		
___ ONE GUIDE PER VSL/T.L. ASSIGNED		
___ TRIP CONTINUITY MAINTAINED		

Colorado State Parks Department
2110 Broadway
2110 Broadway
2110 Broadway

River Outfitter Representative _____ Date _____

Outfitting Number _____