



COLORADO

**Department of
Regulatory Agencies**

Colorado Office of Policy, Research &
Regulatory Reform

2017 Sunset Review: Home Food Service Plans

October 13, 2017



COLORADO

**Department of
Regulatory Agencies**

Executive Director's Office

October 13, 2017

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

Dear Members of the General Assembly:

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

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

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

The Colorado Office of Policy, Research and Regulatory Reform (COPRRR), located within my office, is responsible for fulfilling these statutory mandates. Accordingly, COPRRR has completed the evaluation of the regulation of home food service plans. I am pleased to submit this written report, which will be the basis for COPRRR's oral testimony before the 2018 legislative committee of reference.

The report discusses the question of whether there is a need for the regulation provided under Article 33.5 of Title 35, C.R.S. The report also discusses the effectiveness of the Commissioner of Agriculture and Division of Inspection and Consumer Services 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,

Marguerite Salazar
Executive Director





COLORADO

Department of Regulatory Agencies

Colorado Office of Policy, Research &
Regulatory Reform

2017 Sunset Review Home Food Service Plans

SUMMARY

What is regulated?

Home food service plans, regulated under the Sale of Meat Act (Act), constitute the arrangement for the sale and delivery of food to a consumer, whether or not the consumer is required to pay a membership fee or similar charge or whether any non-food item is included. The Act provides regulatory oversight of licensees who arrange home food service plans during a personal meeting at a consumer's home.

Why is it regulated?

The purpose of the Act is to, among other things, ensure that persons who offer home food service plans to consumers are licensed by the Colorado Department of Agriculture and secure the required surety bond. Typically, sole proprietors must secure a \$3,000 surety bond, and companies must secure a \$5,000 surety bond.

Who is regulated?

In fiscal year 15-16, there were 18 home food service plan licensees.

How is it regulated?

The Act is enforced by the Colorado Commissioner of Agriculture (Commissioner). The Commissioner is authorized to impose discipline on licensees for violations of the Act or applicable rules, promulgate rules and establish policy.

What does it cost?

In fiscal year 15-16, the total expenditures for oversight of home food service plan licensees were \$20,900. There were 0.25 full-time equivalent employees associated with this regulatory oversight.

What disciplinary activity is there?

In the past five fiscal years, the Commissioner imposed discipline on a single licensee for three separate violations of the Act. This occurred in fiscal year 11-12.

KEY RECOMMENDATIONS

Sunset the Sale of Meat Act.

The sunset review of the Act did not identify instances where home food service plan licensees harmed consumers. As illustrated in this report, there were a limited number of complaints and, consequently, formal discipline imposed on licensees by the Commissioner. Specifically, the Commissioner imposed discipline, in fiscal year 11-12, on one licensee for failing to operate with a valid license, failing to secure the required surety bond and failing to provide the required sales contract to consumers. Importantly, none of these violations harmed consumers.

Also, there are a very limited number of licensees operating in Colorado, and since fiscal year 12-13, the total number of licensees has declined in each fiscal year. One possible explanation for the decline is that the traditional door-to-door sales industry is changing. More companies are offering products to consumers via the internet rather than door-to-door sales.

Since this segment of the home food service industry continues to decline and there were very few disciplinary actions imposed by the Commissioner, the General Assembly should sunset the regulation of home food service plans. Doing so will not compromise consumer protection; instead, it will eliminate an unnecessary regulatory program. Sunsetting the regulatory requirements for home food service plan licensees will not limit their ability to operate in Colorado, it will simply remove unnecessary governmental oversight of the industry.

METHODOLOGY

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

MAJOR CONTACTS MADE DURING THIS REVIEW

Colorado Cattleman's Association
Colorado Department of Agriculture
Colorado Farm Bureau
Home Food Service Plan Operators

What is a Sunset Review?

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

Sunset Reviews are prepared by:
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Background

Introduction

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

Sunset reviews are based on the following statutory criteria:

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

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

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

Types of Regulation

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

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

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

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

There are also several levels of regulation.

Licensure

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

Certification

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

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

Registration

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

Title Protection

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

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

Regulation of Businesses

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

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

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

Sunset Process

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

The functions of the Commissioner of Agriculture (Commissioner) as enumerated in Article 33.5 of Title 35, Colorado Revised Statutes (C.R.S.), shall terminate on July 1, 2018, unless continued by the General Assembly. During the year prior to this date, it is the duty of COPRRR to conduct an analysis and evaluation of the program pursuant to section 24-34-104, C.R.S.

The purpose of this review is to determine whether the currently prescribed program to regulate home food service plans should be continued and to evaluate the performance of the Commissioner and the staff of the Division of Inspection and Consumer Services (Division). During this review, the Commissioner and the Division must demonstrate that the program serves the public interest. COPRRR's findings and recommendations are submitted via this report to the Office of Legislative Legal Services.

Methodology

As part of this review, COPRRR staff interviewed Division staff, reviewed records, interviewed officials with state and national professional associations, interviewed other stakeholders, reviewed Colorado statutes and rules, and reviewed the laws of other states.

Profile of the Industry

Colorado authorizes the sale of meat (beef, lamb, veal and pork) and poultry, through home food service plans, by door-to-door salespersons. As the term implies, door-to-door salespersons are individuals, either sole proprietors or employees of a company who go door-to-door throughout neighborhoods to solicit the sale of meat products. Anyone soliciting home service plans to consumers is required to obtain a license to practice from the Division.

In an attempt to mitigate consumer harm, home food service plan licensees, among other requirements, must comply with the Federal Trade Commission (FTC) three-day cooling-off rule. Essentially, the rule allows a consumer to cancel their order within three business days for a refund. The FTC rule applies to orders of more than \$25.

Home food service plans are offered to consumers through several sale options, including one-time purchases, which do not require consumers to sign-up for a subscription.

Some home food service plans require a consumer subscription, necessitating, in some cases, a consumer subscription fee in order for the consumer to receive access to the meat products offered by a home service plan provider. Often, subscription plans include recurring and automatic deliveries that continue until and unless the consumer formally requests a cancellation to the agreement.

The Food Safety and Inspection Service within the U.S. Department of Agriculture (USDA) enforces the requirements under the federal Meat Inspection Act and the Poultry Products Inspection Act. The aforementioned federal laws provide consumer protection by requiring mandatory inspection of meat and poultry products to ensure they are wholesome, unadulterated, and properly marked and packaged. The box or package that contains the meat must include the plant's inspection number.²

² United States Department of Agriculture Food and Inspection Service. *Door-to-Door Meat Sales*. Retrieved June 27, 2017, from https://www.fsis.usda.gov/wps/wcm/connect/e13dc176-60fd-4eeb-b2c1-a5abab9cc7e8/Door_to_Door_Meat_Sales.pdf?MOD=AJPERES

Legal Framework

History of Regulation

Regulatory oversight of custom meat processors was originally enacted as the Frozen Food Provisioner Law in 1963. The law licensed food plan operators, locker plants and processing operations concerning the cutting, wrapping and packaging of meat and meat products intended to be stored in freezers at home or in storage facilities.

Since inception of regulatory oversight, the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) has conducted several sunset reviews. Most recently, COPRRR completed a sunset review in 2008. Some salient recommendations from the report include:

- Repeal the 20-pound minimum threshold for regulation of bulk or bundled meat products.
- Divide the Slaughter, Processing and Sale of Meat Animals Act into custom processing and home food service plans. This recommendation created two, separate practice acts, and each are subject to their own sunset reviews.

The recommendations highlighted above were enacted by the General Assembly in the 2009 legislative session.

Legal Summary

The regulation of home food service plans, commonly referred to as the Sale of Meat Act (Act), is created in section 35-33.5-101, *et seq.*, Colorado Revised Statutes. A home food service plan is the arrangement for the sale and delivery of food to a consumer, whether or not the consumer is required to pay a membership fee or similar charge or whether any non-food item is included.³

Additionally, home food service plans are arranged during a personal meeting at the consumer's home, and the food plan includes meat or meat products.⁴ Meat or meat products are carcasses or parts of carcasses derived from any animals used for food.⁵

³ § 35-33.5-104(8), C.R.S.

⁴ §§ 35-33.5-104(8)(a), and (b), C.R.S.

⁵ § 35-33.5-104(9), C.R.S.

The Act applies to all sales of regulated products or advertisements containing an offer to sell regulated products:⁶

- In bulk⁷ or as a bundle;⁸ or
- On credit, or subject to an installment or other payment plan or as part of a home food service plan including cut and packaged meats intended for storage in a home freezer or other cold storage facility.

In order to obtain a license to offer home food service plans to consumers, an applicant is required to complete an application through the Division of Inspection and Consumer Services within the Colorado Department of Agriculture. Applicants for licensure must also provide evidence that they have executed and delivered a surety bond in the amount determined by the Commissioner of Agriculture (Commissioner), not to exceed \$50,000.⁹

Licensees who offer home food service plans to consumers are required to provide a written contract for each sale. The written contract must include the following:¹⁰

- The name and address of the seller;
- The name and address of the buyer;
- The date of the sale;
- Weight and pricing information;
- The total price to be paid by the buyer, including any applicable charges for cutting, freezing, wrapping, packaging, delivery, freezer or locker rental, insurance, interest, finance charge, service charge or membership fee;
- The total weight of all regulated products, including separately itemized weights for each regulated product;
- A separate itemization of all nonfood charges;
- The make, model number and cubic foot capacity of any locker, freezer or other appliance or facility sold or rented under the contract;
- The signature of the buyer; and
- Any other information requested by the Commissioner.

At the time of the sale, the licensees must also provide information included in the written agreement in bold type of a minimum font size of 10 points stating:¹¹

YOU THE BUYER, MAY CANCEL THIS TRANSACTION AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE OF THIS TRANSACTION. SEE ATTACHED NOTICE OF CANCELLATION FORM FOR AN EXPLANATION OF THIS RIGHT.

⁶ §§ 35-33.5-104(1)(a) and (b), C.R.S.

⁷ Bulk meat consists of whole carcasses, or parts, of commercial size and requires further cutting into cuts of retail size for individual consumption.

⁸ Bundle means individually wrapped cuts of meat packaged together for sale as a single unit.

⁹ § 35-33.5-303(1), C.R.S.

¹⁰ §§ 35-33.5-203(1)(a-j), C.R.S.

¹¹ 8 CCR §1202-12, Inspection and Consumer Services Division Rules. Rule 2.01(f).

Unless requested by the consumer, all regulated products must be sharp frozen before delivery.¹² Sharp freezing is the process of refrigeration sufficient to reduce every portion of any meat or meat product to zero degrees Fahrenheit or less in five hours or less.¹³

Additionally, any advertisement of a home food service plan is required to state whether there are any service charges or any other additional costs associated with its purchase.¹⁴

Advertisements of home food service plans cannot make false or misleading statements concerning:¹⁵

- The grade (prime, choice or select), quality or special properties of the food item sold;
- The reasons for, existence of, or amounts of price reductions of a food item; or
- The purchase or use of a food item by any other person, hotel, restaurant or institution.

The Commissioner is responsible for, among other things, imposing discipline on licensees for violations of the Act or applicable rules. Specifically, the Commissioner is authorized to deny, suspend, revoke, restrict, refuse to renew or place on probation a licensee who:¹⁶

- Makes a false statement or misrepresentation on a licensing application;
- Has had a previous license revoked, suspended or denied by any authority to grant a license in Colorado or any other state;
- Has failed to comply with or violated any provision of the statute or rule promulgated by the Commissioner;
- Has allowed the required surety bond to expire, lapse or be cancelled and has failed to provide evidence of a new surety bond within 10 days; or
- Fails to obey any lawful order of the Commissioner.

The Commissioner may also issue a cease and desist order to a licensee whenever immediate enforcement of any of the provisions of the statute is deemed necessary for the protection of the public health or welfare.¹⁷

¹² § 35-33.5-205, C.R.S.

¹³ § 35-33.5-104(12), C.R.S.

¹⁴ 8 CCR §1202-12, Inspection and Consumer Services Division Rules. Rule 3.01.

¹⁵ 8 CCR §1202-12, Inspection and Consumer Services Division Rules. Rule 3.02 (a-c).

¹⁶ §§ 35-33.5-204(1), C.R.S.

¹⁷ § 35-33.5-105(4), C.R.S.

The Commissioner or court of competent jurisdiction may impose civil fines on licensees for violations of the Act or applicable rules. Civil fines cannot exceed \$750 per violation, except that the amount may be doubled if it is determined, after a notice and opportunity for a hearing, that the licensee violated the Act or rules a second time.¹⁸ Each day the violation occurs constitutes a separate violation.¹⁹

The Commissioner has the authority, upon consent or obtaining an administrative search warrant, to have access to any premises for the purpose of any examination or inspection necessary to enforce the Act or rules, including relevant records.²⁰

¹⁸ § 35-33.5-305(1), C.R.S.

¹⁹ § 35-33.5-305(1), C.R.S.

²⁰ § 35-33.5-105(3)(a), C.R.S.

Program Description and Administration

The regulation of home food service plans, commonly referred to as the Sale of Meat Act (Act) is created in section 35-33.5-101, *et seq.*, Colorado Revised Statutes (C.R.S.).

Regulatory oversight of the Act is vested in the Commissioner of Agriculture (Commissioner) who is responsible for, among other things, rulemaking and imposing discipline on licensees who violate the statute or applicable rules.

The Division of Inspection and Consumer Services (Division) staff, within the Colorado Department of Agriculture, is responsible for a variety of administrative functions related to home food service plan licensing. Duties include, but are not limited to: issuing licenses, researching complaints and providing general support to the Commissioner.

In fiscal year 15-16, the Commissioner devoted 0.25 full-time equivalent (FTE) employees to provide regulatory oversight of home service plan licensees. The FTE for the regulatory oversight is a Program Manager.

Table 1 highlights the total program expenditures for the regulation of home food service plan licensees in fiscal years 11-12 through 15-16.

Table 1
Total Program Expenditures in Fiscal Years 11-12 through 15-16

Fiscal Year	Total Program Expenditures
11-12	\$39,000
12-13	\$18,200
13-14	\$22,600
14-15	\$22,600
15-16	\$20,900

As delineated in Table 1, the total expenditures in fiscal year 11-12 were the highest during the five-year timeframe.

Licensing

The Act requires anyone who chooses to offer home food service plans to consumers via door-to-door solicitation to be licensed by the Commissioner. In order to obtain a home food service plan license, a candidate is required to complete a licensing application, pay the applicable licensing fee and secure a surety bond, not to exceed \$50,000. The Commissioner establishes the bond amount, and a sole proprietor's bond is typically set at \$3,000 and companies are usually required to secure a \$5,000 surety bond.

Table 2 illustrates the total number of home food service plan licensees in fiscal years 11-12 through 15-16.

Table 2
Total Number of Home Food Service Plan Licensees
in Fiscal Years 11-12 through 15-16

Fiscal Year	Total Number of Home Food Service Plan Licensees
11-12	26
12-13	27
13-14	25
14-15	23
15-16	18

As Table 2 indicates, the number of home food service plan licensees is declining. This is attributable, at least in part, to the changing technology in home food service plans, particularly with the advent of the internet. Most companies related to this industry now operate an internet-based business instead of the traditional door-to-door service.

Table 3 delineates the total number of original and renewal licenses issued in fiscal years 11-12 through 15-16.

Table 3
Total Number of Original and Renewal Licenses in Fiscal Years 11-12 through 15-16

Fiscal Year	Original	Renewal	Active Licenses
11-12	0	26	26
12-13	1	26	27
13-14	0	25	25
14-15	0	23	23
15-16	0	18	18

In fiscal year 15-16, the fee to obtain an original and to renew a home food service plan license was \$340 for a sole operator, \$750 for 2-5 salespeople, \$1,250 for 6-10 salespeople, \$1,500 for 11-15 salespeople, \$2,000 for 16-20 salespeople and \$3,500 for more than 21 salespeople.

Complaints/Disciplinary Actions

In the past five fiscal years, the Division received few complaints concerning home food service plan licensees. Table 4 highlights the total number of complaints the Division received, as well as the nature of the complaints, in fiscal years 11-12 through 15-16.

Table 4
Number of Complaints in Fiscal Years 11-12 through 15-16

Nature of Complaints	FY 11-12	FY 12-13	FY 13-14	FY 14-15	FY 15-16
Practicing without a License	3	0	2	1	0
Standard of Practice	0	3	1	0	0
Total	3	3	3	1	0

As illustrated in Table 4, the total number of complaints filed against home food service plans was fairly limited in fiscal years 11-12 through 15-16. Also highlighted in Table 4, practicing without a license was the most common complaint in the referenced fiscal years.

Additionally, Table 5 shows the total number of disciplinary actions imposed on home food service plan licensees in fiscal years 11-12 through 15-16.

Table 5
Total Number of Disciplinary Actions in Fiscal Years 11-12 through 15-16

Type of Action	FY 11-12	FY 12-13	FY 13-14	FY 14-15	FY 15-16
Revocation/Surrender/Voluntary Relinquishment	0	0	0	0	0
Suspension	0	0	0	0	0
Probation/Practice Limitation	0	0	0	0	0
Letter of Admonition	0	0	0	0	0
License Denied	0	0	0	0	0
Fine	0	0	0	0	0
Other (Notice of Violation and Cease and Desist)	3	0	0	0	0
Total Disciplinary Actions	3	0	0	0	0
Dismissals	0	3	3	1	0
Letter of Concern	0	0	0	0	0
Total Dismissals	0	3	3	1	0

As highlighted in Table 5, there were very few disciplinary actions imposed on home food service plan licensees in the past five fiscal years. In fact, fiscal year 11-12 was the only year in which discipline was imposed by the Commissioner. In this fiscal year, one home food service plan licensee was disciplined for three separate violations of the statute. The licensee failed to secure the required surety bond and was issued a cease and desist order. The licensee also received two “Notice of Violations” from the Commissioner due to offering services to consumers without the required license and failing to provide an adequate sales contract and a notice of cancellation to consumers.

Collateral Consequences – Criminal Convictions

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

The Act does not contain a provision authorizing the Commissioner to deny, revoke or suspend a home service plan licensee based on past criminal history. As such, in the past five fiscal years, the Commissioner did not deny, revoke or suspend a home food service plan licensee based on past criminal history.

Analysis and Recommendations

Recommendation 1 – Sunset the Sale of Meat Act.

The regulation of home food service plans is located in section 35-33.5-101 *et seq.*, Colorado Revised Statutes, and is referred to as the Sale of Meat Act. A home food service plan is the arrangement for the sale and delivery of food to a consumer, whether or not the consumer is required to pay a membership fee or similar charge or whether any non-food item is included.²¹

Home food service plans are arranged through door-to-door meetings with consumers by licensees. To obtain a home food service plan license, an applicant is required to complete a licensing application through the Division of Inspection and Consumer Services (Division) within the Colorado Department of Agriculture and secure a surety bond. Once these requirements are met, the Division staff issues a license to the applicant.

When offering home food service plans, licensees are required to provide a sales contract to consumers for each transaction. The sales contract, among other things, informs consumers that a sale may be canceled within three business days of the transaction.

The purpose of state regulation is to provide protection to consumers. In fact, the first sunset criterion asks whether regulation is necessary to protect the health, safety and welfare of the public.

This sunset review did not identify instances where home food service plan licensees harmed consumers. As indicated in Tables 4 and 5 in this report, there were a limited number of complaints and, consequently, formal discipline imposed on licensees. Importantly, the discipline imposed by the Commissioner of Agriculture (Commissioner) was for a home food service plan provider failing to operate with a valid license, failing to secure the required surety bond and failing to provide the required sales contract to consumers. None involved consumer harm.

One possible explanation for the limited number of complaints and disciplinary actions imposed on practitioners is the small number of licensees. In fiscal year 15-16, there were only 18 licensees in the state of Colorado. In fact, since fiscal year 12-13, the total number of licensees has declined in each fiscal year.

Additionally, interviews conducted during this sunset review indicated that unlicensed home food service plan salespersons were compromising consumer protection.

²¹ § 35-33.5-104(8), C.R.S.

Typically, unlicensed salespersons offer meat or meat products to consumers from meat stored in their vehicle (most often a truck with a cooler). They are transient and are difficult to identify by Division staff. As such, it is difficult to identify unlicensed home food service providers and insulate consumers from harm.

The limited number of home food service plan licensee complaints and disciplinary actions calls into question the need for state regulation. Governmental interference in the marketplace via formal regulation is intended to provide protection to consumers. As highlighted in this sunset review, there were very few disciplinary actions imposed by the Commissioner.

Also, there are a very limited number of licensees operating in Colorado. Perhaps one explanation is that the traditional door-to-door salesperson industry is changing. More companies are offering products to consumers via internet sales rather than door-to-door sales. The decreasing number of licensees further calls into question the need for governmental regulation of home food service plan licensees.

As highlighted earlier, door-to-door salespersons who harm consumers, for the most part, are unlicensed in Colorado. Since the door-to-door salesperson industry is transient, it is difficult for Division staff to enforce.

Since the home food service plan industry continues to decline and there were very few disciplinary actions imposed by the Commissioner, the General Assembly should sunset the regulation of home food service plans. Doing so will not compromise consumer protection; instead, it will eliminate an unnecessary regulatory program. Sunsetting the regulatory requirements for home food service plan licensees will not limit their ability to operate in Colorado, it will simply remove unnecessary governmental oversight of the industry.