



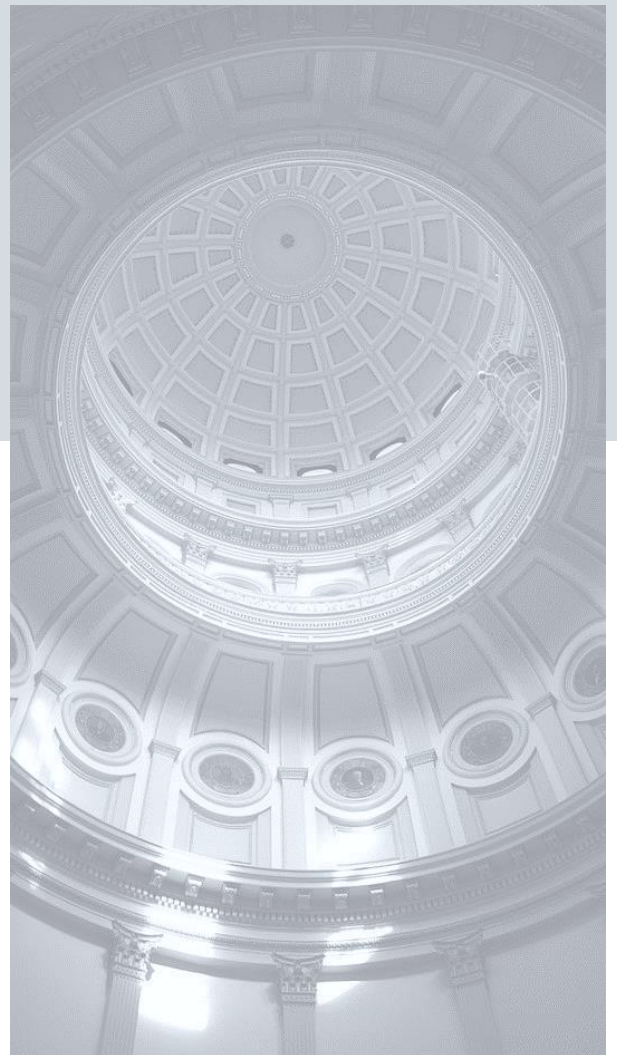
COLORADO

**Department of
Regulatory Agencies**

Colorado Office of Policy, Research &
Regulatory Reform

2019 Sunset Review

The Regulation of Poultry Eggs



October 15, 2019



COLORADO

**Department of
Regulatory Agencies**

Executive Director's Office

October 15, 2019

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

Dear Members of the General Assembly:

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

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

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

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

The report discusses the question of whether there is a need for the regulation provided under Article 21 of Title 35, C.R.S. The report also discusses the effectiveness of the Colorado Commissioner of Agriculture 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 cursive script that reads 'Patty Salazar'.

Patty Salazar
Executive Director





COLORADO

Department of Regulatory Agencies

Colorado Office of Policy, Research &
Regulatory Reform

2019 Sunset Review

The Regulation of Poultry Eggs

SUMMARY

What is regulated?

In Colorado, eggs are inspected at production, retail, and wholesale facilities throughout the state to ensure egg quality and accuracy in labeling.

Why is it regulated?

Section 35-21-101, Colorado Revised Statutes, *et seq.*, (Egg Law) protects Colorado consumers by ensuring egg quality and compliance with the washing, sanitizing, candling, grading, packing, and storage practices designated by the United States Department of Agriculture (USDA).

Who is regulated?

Any person engaged in selling more than 250 dozen eggs per month is required to obtain a dealer license on an annual basis. In calendar year 2018, 2,730 egg dealer licenses were issued across the state of Colorado.

How is it regulated?

The Egg Law is enforced by the Colorado Commissioner of Agriculture (Commissioner). In order to ensure effective regulation, inspectors at the Colorado Department of Agriculture (CDA) conduct inspections of eggs at production, retail, and wholesale facilities. In addition, CDA inspects egg producing bird flocks with less than 3,000 birds, while the USDA inspects bird flocks of greater than 3,000 birds. However, CDA has the authority to inspect chicken eggs from flocks regulated by both the USDA and CDA.

What does it cost?

Total program expenditures in fiscal year 17-18 were \$126,175 with a total of 1.57 full-time equivalent employees administering the Egg Program.

What disciplinary activity is there?

The Egg Law provides the Commissioner with the authority to issue fines, civil penalties, and stop-sale notices for violations of the Egg Law. In fiscal year 17-18, stop sale notices were issued for 1,946 dozen eggs.

KEY RECOMMENDATIONS

Continue the Regulation of Poultry Eggs for 11 years, until 2031.

The primary purpose of the Egg Law is to protect consumers from the potential harm related to foodborne illness in shell eggs. The regulatory mechanism employed by the Commissioner strives to protect consumers from these types of harm, and program staff work to ensure that the quality standards enacted by the U.S. Department of Agriculture (USDA) are met through the promulgation of licensure requirements and the performance of regular inspections. The Egg Law should be continued for 11 years, until 2031, since the Egg Program protects the public from harm and very few substantive changes to the Egg Law have been recommended.

Relocate the regulatory authority for other types of shell eggs from the Colorado Department of Public Health and Environment to the Egg Law, define “other eggs” in the Egg Law, and require the Commissioner to promulgate rules related to other egg types.

Due to the lack of statutory authority within the Egg Law for the Commissioner to regulate egg types other than chicken eggs, the Colorado Department of Public Health and Environment presently regulates and inspects these additional shell egg types within its Manufactured Food Program. As a result, licensing fees, processes and regulatory procedures vary based upon egg type and the agency rules established for each of the two separate programs. Therefore, to consolidate and streamline the regulation of all egg types, other types of shell eggs should be regulated under the Egg Law, and rules should be promulgated by the Commissioner for all other egg types.

METHODOLOGY

As part of this review, Colorado Office of Policy, Research and Regulatory Reform staff interviewed CDA staff, officials from CDPHE, the State Veterinarian’s Office, the Attorney General’s Office, and representatives of national and state organizations; and reviewed CDA records, Colorado laws and rules, and the laws of other states.

MAJOR CONTACTS MADE DURING THIS REVIEW

Colorado Attorney General’s Office
Colorado Counties, Inc.
Colorado Department of Agriculture
Colorado Department of Public Health and Environment
Colorado Egg Producer’s Association
Colorado Municipal League
National Poultry Improvement Plan
U.S. Department of Agriculture

What is a Sunset Review?

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

Sunset Reviews are prepared by:
Colorado Department of Regulatory Agencies
Colorado Office of Policy, Research and Regulatory Reform
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Background

Introduction

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

Sunset reviews are based on the following statutory criteria:

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

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

prepared pursuant to subsection (5)(a) of this section must include data on the number of licenses or certifications that the agency denied based on the applicant's criminal history, the number of conditional licenses or certifications issued based upon the applicant's criminal history, and the number of licenses or certifications revoked or suspended based on an individual's criminal conduct. For each set of data, the analysis must include the criminal offenses that led to the sanction or disqualification; and

- X. Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.

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

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

These are but a few examples of how the various sections of a sunset report provide the information and, where appropriate, analysis required by the sunset criteria. Just as not all criteria are applicable to every sunset review, not all criteria are specifically highlighted as they are applied throughout a sunset review.

Types of Regulation

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

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

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

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

There are also several levels of regulation.

Licensure

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

Certification

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

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

Registration

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

Title Protection

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

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

Regulation of Businesses

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

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

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

Sunset Process

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

The functions of the Colorado Commissioner of Agriculture (Commissioner) as enumerated in sections 35-21-104 and 35-21-107(2), Colorado Revised Statutes (C.R.S.), shall terminate on July 1, 2020, unless continued by the General Assembly. During the year prior to this date, it is the duty of COPRRR to conduct an analysis and evaluation of the program under review pursuant to section 24-34-104, C.R.S.

The purpose of this review is to determine whether the currently prescribed regulation should be continued and to evaluate the performance of the Commissioner. During this review, the Commissioner 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 Colorado Department of Agriculture (CDA) staff, officials from the Colorado Department of Public Health and Environment (CDPHE), the State Veterinarian's Office, the Attorney General's Office, and representatives of national and state organizations; and reviewed CDA records, Colorado laws and rules, and the laws of other states.

Profile of the Industry

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

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

Eggs are a widely consumed food product within the United States. In calendar year 2019, per capita consumption of eggs in the United States reached an average of 287.1 eggs, which is the year of the highest average consumption rate within the past decade.² In Colorado, egg production reached over 123 million eggs in fiscal year 17-18, ranking 21st in the nation. Also in fiscal year 17-18, eggs produced in Colorado were valued at approximately \$113.7 million, with a ranking of 25th in the nation.

Given the prevalence of egg consumption, there are multiple potential risks to public health if proper sanitation, handling, packaging and refrigeration methods are not closely followed. For example, eggs may become hosts to a variety of bacteria, including salmonella. Food related salmonella is estimated to cause 1.3 million illnesses and up to 500 deaths each year in the United States. A specific strain referred to as *Salmonella Enteritidis* accounts for approximately 300,000 illnesses per year, of which approximately 80 percent can be directly linked to egg consumption.³

In addition, proper care and sanitation of bird flocks for egg production is critical to prevent additional health risks to both birds and humans. Avian influenza (AI), also referred to as the bird flu, is an infectious bird disease that can cause mild to severe symptoms, and may lead to death in infected birds. A strain of AI with high pathogenicity can cause illness in both birds and humans, such as the strain commonly referred to as H5N1. H5N1 has caused illness in millions of birds and hundreds of people in close contact with infected birds in Asia.⁴

Stringent regulations have been established on both the federal and state levels to reduce the risk of harm to consumers. Chicken egg production is regulated by both the U.S. Department of Agriculture (USDA) and the Egg Program within the Colorado Department of Agriculture (CDA). The USDA oversees the regulation of chicken flocks with greater than 3,000 birds, while CDA regulates flocks with less than 3,000 birds. However, CDA has the authority to inspect chicken eggs from flocks regulated by both the USDA and CDA.

The primary directive of CDA's Egg Program is to ensure that standards established by the USDA are being met in Colorado's shelled egg (chicken egg) production. In addition, CDA inspects chicken eggs at production, retail, and wholesale facilities in order to ensure egg quality and accuracy in labeling. Producer inspections also evaluate the compliance of each producer in the washing, sanitizing, candling, grading, packing, and storage practices designated by the USDA.⁵

Egg candling is a process in which an egg grader looks at the inside of an egg to determine its quality. This process used to be completed by hand, holding a candle

² American Egg Board. *Egg Industry Overview*. Retrieved July 09, 2019, from <https://www.aeb.org/farmers-and-marketers/industry-overview>

³ U.S. Department of Agriculture, Food Safety Inspection Service. *Risk Assessments of Salmonella Enteritidis in Shell Eggs and Salmonella spp. In Egg Products*, (2005) p.6.

⁴ American Egg Board, *Eggyclopedia, 5th Edition*, (2012) p. 4.

⁵ Colorado Department of Agriculture. *Eggs: Information on Selling Eggs in Colorado*. Retrieved May 02, 2019, from <https://www.colorado.gov/pacific/aginspection/eggs>

behind an egg, and is commonly referred to as hand candling. Today, some hand candling is still completed using electronic equipment, but most eggs are inspected with the use of high-intensity lights while the eggs pass down a conveyor belt. The eggs are rotated so that any imperfections may be visible under the light.⁶ The egg candler evaluates various parts of the egg for flaws, including the visible quality of the shell, yolk, egg white and air cell.

The shell is the egg's outer protective covering, which accounts for approximately 9 to 12 percent of the egg's total weight.⁷ The shell is composed of three separate layers: the mammillary (inner layer), the spongy layer, and the cuticle.⁸ Shell color is not a factor in the USDA standards and grades and does not in any way change the quality of an egg.⁹

The white (Albumen) accounts for approximately 66 percent of the egg's liquid weight¹⁰ and contains four separate layers.¹¹ Cloudy egg whites indicate freshness of the egg while older eggs may have a clearer appearance.¹²

The yolk consists of four layers and accounts for approximately 31 percent of the total egg weight.¹³ The yolk is the location for the formulation of an embryo in fertilized eggs.¹⁴ Yolk color may also vary, depending on the diet of the hen.¹⁵

The air cell is a pocket of air at the end of the egg that forms when the egg is first laid by a hen. No air or very little air is present within the egg prior to the laying process but forms as the egg cools and the liquid contents within the egg contract.¹⁶

Both the USDA and CDA use uniform standards for egg grading. Specific quality standards were developed by the USDA in order to classify eggs into condition and characteristic types that have been determined to be preferable to both producers and consumers.¹⁷ Quality grading standards have been developed based upon both interior and exterior qualities including the shell, yolk, white, and size of the air cell.¹⁸ The following are qualities of each of the specific grades of raw eggs available for sale to U.S. consumers:¹⁹

⁶ American Egg Board, *Eggcyclopedia*, 5th Edition, (2012), p. 12.

⁷ American Egg Board, *Eggcyclopedia* 5th Edition, (2012), p. 79.

⁸ United States Department of Agriculture, *Agricultural Handbook Number 75: Egg-Grading Manual*, (2000), p.11.

⁹ United States Department of Agriculture, *Agricultural Handbook Number 75: Egg-Grading Manual*, (2000), p.17.

¹⁰ American Egg Board, *Eggcyclopedia*, 5th Edition, (2012), p. 2.

¹¹ United States Department of Agriculture, *Agricultural Handbook Number 75: Egg-Grading Manual*, (2000), p.11.

¹² Farmer's Almanac. *15 Fun Facts for Egg Day*. Retrieved May 02, 2019, from

<https://www.farmersalmanac.com/15-egg-facts-you-may-not-know-21232>

¹³ United States Department of Agriculture, *Agricultural Handbook Number 75: Egg-Grading Manual*, (2000), p.11.

¹⁴ American Egg Board, *Eggcyclopedia*, 5th Edition, (2012), p. 88.

¹⁵ ThinkEgg.com. *Fascinating Facts*. Retrieved May 02, 2019, from <http://thinkegg.com/index.php/21-2/>

¹⁶ American Egg Board, *Eggcyclopedia*, 5th Edition, (2012), p. 2.

¹⁷ United States Department of Agriculture, *Agricultural Handbook Number 75: Egg-Grading Manual*, (2000), p. 16.

¹⁸ United States Department of Agriculture, *Agricultural Handbook Number 75: Egg-Grading Manual*, (2000), p. 15.

¹⁹ United States Department of Agriculture, *Agricultural Handbook Number 75: Egg-Grading Manual*, (2000), p. 27.

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- Grade AA quality - The shell of the egg must be unbroken, clean, and practically normal. The air cell may show unlimited movement. The yolk should be almost completely free of any defects, and the white must be mostly firm and clear. The outline of the yolk when candled should be only slightly well defined;
 - Grade A quality - The shell of the egg must be unbroken, clean, and practically normal. The air cell may show unlimited movement, and can be free or bubbly. The yolk should be practically free of any noticeable defects, and should be only fairly well defined when candled. The white must be clear and reasonably firm; and
 - Grade B quality - The shell of the egg must be unbroken, but can be abnormal and may have areas of staining; however prominent stains or dirt are not permitted. The air cell may show unlimited movement, and the yolk can appear dark, flattened, or enlarged. The yolk may also show other serious defects as long as the egg is still determined to be edible. The white can be watery or weak in texture, so that the yolk outline is easily visible when the egg is candled.

The USDA has also assigned additional categories for specific defect types:²⁰

- Check - A broken or cracked shell with membranes still attached so that the egg is not leaking;
- Leaker - A broken or cracked shell and membrane so that the contents of the egg may be able to leak out of the shell; and
- Dirty - An unbroken shell with noticeable dirt or foreign material adhering to the shell, prominent stains, or stains that cover more than 1/32 of the shell if localized, and more than 1/16 of the shell if the stain is scattered.

Further, the USDA standards also provide specific degrees of variation for each egg type:²¹

- Practically Normal - A shell that has the proximal typical shape and has no weak spots (typical of AA and A quality eggs); and
- Abnormal - A shell that may be abnormally shaped or possess weak spots in strength. The egg may also have discernable ridges or other thin spots (typically B quality eggs).²²

Additionally, eggs are categorized by size or weight class:²³

- Jumbo
- Extra large
- Large
- Medium
- Small
- Peewee

²⁰ United States Department of Agriculture, *Agricultural Handbook Number 75: Egg-Grading Manual*, (2000), p. 27.

²¹ United States Department of Agriculture, *Agricultural Handbook Number 75: Egg-Grading Manual*, (2000), p. 18.

²² United States Department of Agriculture, *Agricultural Handbook Number 75: Egg-Grading Manual*, (2000), p. 18-19.

²³ United States Department of Agriculture, *Agricultural Handbook Number 75: Egg-Grading Manual*, (2000), p. 29.

Legal Framework

History of Regulation

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

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

Federal Regulations

In 1917, Congress enacted the Farm Products Inspection Act (FPIA), which established the authority for the development of egg grades and the grading service. Congress also provided funding for the U.S. Department of Agriculture (USDA) and a yearly authorization for the FPIA beginning in 1925.²⁴

The Agricultural Marketing Act of 1946 provided authority for the operation of the grading service in use today and developed the current grading standards. The federal quality standards also provided a foundation for the development of state grading systems and standards.²⁵

In order to provide further consistency in both standards and grading systems, the Egg Products Inspection Act (EPIA) was ratified by Congress in 1970. The EPIA provided additional clarification that no state or jurisdictional standards could be applied in lieu of the federal standards where eggs had been transported via interstate commerce. This encouraged many states to amend their standards to become consistent with federal requirements.²⁶ The EPIA has increased national uniformity in standards, grading, and labeling, leading to a more streamlined process in the transportation and sale of eggs through interstate commerce.²⁷

State Regulations

In 1933, Colorado established section 35-21-101, *et seq.*, C.R.S.(Egg Law), with the expressed purposes of fostering the development of the state's egg industry, preventing the sale of eggs unfit for human consumption, and preventing fraud and deception in egg sales. Throughout the 1930s, revenue was generated to sustain the program with

²⁴ United States Department of Agriculture, *Agricultural Handbook Number 75: Egg-Grading Manual* (2000), p. 47.

²⁵ United States Department of Agriculture, *Agricultural Handbook Number 75: Egg-Grading Manual* (2000), p. 47.

²⁶ United States Department of Agriculture, *Agricultural Handbook Number 75: Egg-Grading Manual* (2000), p. 47.

²⁷ United States Department of Agriculture, *Agricultural Handbook Number 75: Egg-Grading Manual* (2000), p. 48.

licensing fees through the license categories including producers, wholesalers and retailers.

The Egg Law underwent major restructuring in 1956, when the original egg law from 1933 was repealed and reenacted. The most notable change to the law was the restructuring of licensing fees, which were based upon gross volume sales. The following fee structure was enacted:

- Less than \$50,000 - \$4 license fee;
- \$50,000 to \$500,000 - \$15 license fee; and
- Over \$500,000 - \$25 license fee.

During the 1960s, the regulatory program that was cash funded by the license fees, saw a decrease in fees, which led to a reduction in program staff within the Colorado Department of Agriculture (CDA). Program staff was reduced to historically low levels, with one field inspector, one assistant supervisor, and one clerk to oversee the entire program. In 1964, the Governor provided an additional \$50,000 to supplement program staff size, and CDA was able to hire four additional field inspectors.

The first sunset review of the Egg Law was completed in 1994. The sunset review offered recommendations to create additional statutory efficiencies. The review concluded that wholesalers had an economic interest in ensuring that all egg grading and standards were being met, making the need to license egg candlers obsolete. Therefore, the General Assembly removed the license requirement for egg candlers.

Several additional changes to the fee and license structure were enacted by the legislature as a result of the passage of Senate Bill 09-127 following the 2008 sunset review. The fee structure based upon gross volume sales was removed, and the State Agricultural Commission was given the authority to establish the new fee structure. Additionally, the statute was amended to remove the wholesaler and retailer license categories, and replaced them with a single “dealer” license.

Legal Summary

The second and third sunset criteria question

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

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

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

The regulation of poultry eggs is established in the Egg Law. The Colorado Commissioner of Agriculture (Commissioner) is directed by the Egg Law to promulgate rules relating to the processing, storage, labeling, transporting, sale, record-keeping, and inspection of shell eggs,²⁸ and is also responsible for the enforcement of the Egg Law.²⁹ “Poultry eggs” “shell eggs” and “eggs” are defined in the Egg Law as, “shell eggs of the domesticated chicken.”³⁰

Program rules require that each dealer must store, transport, display and maintain shell eggs in a sanitary environment, free from any agent or condition that might affect the quality, taste, or edibility of shell eggs.³¹ Additionally, shell eggs must be washed using potable water and appropriate cleaning agents.³²

Shell eggs are also required to be stored with adequate refrigeration,³³ and the Commissioner enforces temperature requirements. It is a requirement that shell eggs are to be maintained at an ambient temperature of no less than 33 degrees Fahrenheit, and no more than 41 degrees Fahrenheit.³⁴ Delivery trucks must also maintain adequate refrigeration within the same temperature parameters while transporting shell eggs.³⁵

Each case, carton or container of shell eggs is required to be legibly printed at the time of packaging with a label that contains:³⁶

- The name and address of the producer that packaged the eggs,
- The USDA egg surveillance registration number or plant number,
- The egg license number issued by another state containing the two-digit letter abbreviation of the state of origin, or
- The business identification number issued by CDA.

In addition, each case, carton or container of shell eggs must list the month and day of packaging, and must also have the designations of weight and grade printed on each container.³⁷

²⁸ § 35-21-106(1), C.R.S.

²⁹ § 35-21-106(2)(a), C.R.S.

³⁰ § 35-21-101(15), C.R.S.

³¹ 8 CCR 1202-10-2.1, Rules Pertaining to the Administration and Enforcement of the Colorado Egg Law.

³² 8 CCR 1202-10-2.2, Rules Pertaining to the Administration and Enforcement of the Colorado Egg Law.

³³ § 35-21-103(2), C.R.S.

³⁴ 8 CCR 1202-10-1.1.1, Rules Pertaining to the Administration and Enforcement of the Colorado Egg Law.

³⁵ 8 CCR 1202-10-1.2, Rules Pertaining to the Administration and Enforcement of the Colorado Egg Law and § 35-21-102(2), C.R.S.

³⁶ 8 CCR 1202-10-3.1, Rules Pertaining to the Administration and Enforcement of the Colorado Egg Law and § 35-21-103(2), C.R.S.

³⁷ 8 CCR 1202-10-3.0, Rules Pertaining to the Administration and Enforcement of the Colorado Egg Law.

The Egg Law defines a “dealer” as, “...any person who is engaged in selling eggs.”³⁸ All producers, wholesalers and dealers are required to obtain a dealer license from CDA (individuals selling less than 250 dozen eggs per month directly to consumers are regulated by the Colorado Cottage Foods Act and are not required to purchase a dealer’s license).³⁹ There are currently seven separate categories of dealer licenses available, which are based upon average number of cases sold per week during the previous 12 months:⁴⁰

- Class I Producer/Dealer- Less than 3,000 domesticated chicken hens per egg producer with eggs sold to stores, restaurants, hospitals and other institutions;
- Class II Dealer - up to 0.5 cases per week (15 dozen eggs) and more than 3,000 hens;
- Class III Dealer - over 0.5 and up to 2 cases per week (over 15 and up to 60 dozen eggs) and more than 3,000 hens;
- Class IV Dealer - over 2 cases and up to 25 cases per week (over 60 and up to 750 dozen eggs) and more than 3,000 hens;
- Class V Dealer- over 25 cases and up to 100 cases per week (over 750 and up to 3,000 dozen eggs) and more than 3,000 hens;
- Class VI Dealer - over 100 cases and up to/including 500 cases per week (over 3,000 and up to 15,000 dozen eggs) and more than 3,000 hens; and
- Class VII Dealer - over 500 cases per week (over 15,000 dozen eggs) and more than 3,000 hens.

Any person seeking to obtain a dealer’s license must complete an application with CDA, and provide the following information:

- The name of the applicant;
- If the applicant is a firm, the names of its members;
- If the applicant is a corporation, the names of its officers;
- The location of the business;
- The telephone number of the business;
- Any ownership information concerning the application that the Commissioner may require; and
- Any contact information that the Commissioner requires.

Any person who violates any provisions of the Egg Law is guilty of a misdemeanor, and may be punished with a fine of not more than \$500. Each day in which a violation occurs is counted as a separate violation.⁴¹

The Commissioner also has the authority to impose a civil penalty for any person who violates a provision of the Egg Law or any rules promulgated under the Egg Law. The

³⁸ § 35-21-101(6), C.R.S.

³⁹ § 25-4-1614(2)(b)(II), C.R.S.

⁴⁰ Colorado Department of Agriculture. *Application for Egg Dealer License*. Retrieved May 30, 2019, from <https://www.colorado.gov/pacific/sites/default/files/Fillable%20Egg%20Dealer%20Renewal%20License.pdf>

⁴¹ § 35-21-107(1), C.R.S.

civil penalty shall not exceed \$750 per day, per violation. Any civil penalties collected are deposited into the Inspection and Consumer Services Cash Fund.⁴²

The Commissioner can also enforce stop sale notices in the event of a violation of the Egg Law or pertinent rules and regulations. For example, shell eggs found to be below the minimum standards and requirements for quality and/or weight for the size labeled will be withdrawn from sale at the time of inspection. Stop sale notices may also be issued for the sale of shell eggs more than 45 days after the pack date, or if shell eggs are sold by any dealer who is not licensed pursuant to the Egg Law.⁴³

⁴² § 35-21-107.5, C.R.S.

⁴³ 8 CCR 1202-10-5.0, Rules Pertaining to the Administration and Enforcement of the Colorado Egg Law.

Program Description and Administration

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

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

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

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

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

The Colorado Commissioner of Agriculture (Commissioner) regulates and enforces section 35-21-101, *et seq.*, Colorado Revised Statutes (C.R.S.) (Egg Law), and any applicable regulations through the Colorado Department of Agriculture's (CDA) Division of Inspection and Consumer Services (ICS), which oversees the Egg Program.⁴⁴ In order to provide enforcement, CDA employs staff to provide professional support to the Egg Program. Table 1, below, lists the total number of full-time equivalent employees and total related program expenditures for fiscal years 13-14 through 17-18.

Table 1
Program Expenditures and Full-Time Equivalent Employees

Fiscal Year	Total Program Expenditure	FTE
13-14	\$118,323	1.36
14-15	\$111,969	1.22
15-16	\$135,085	1.28
16-17	\$135,085	1.28
17-18	\$126,175	1.57

⁴⁴ Colorado Department of Agriculture. *Who We Are*. Retrieved July 22, 2019, from <https://www.colorado.gov/pacific/aginspection>

In fiscal year 17-18, the staffing allocation of FTE for the Egg Program included:

- Program Manager - 0.18 FTE. The program manager administers the egg program, which includes management of general operations and strategic direction;
- Inspection Staff - 0.85 FTE. Inspection staff perform professional inspections to ensure compliance with the Egg Law and the Commissioner's rules;
- Administrative Assistant - 0.47 FTE. The administrative assistant is responsible for the establishment and maintenance of the licensing and registration database, and maintains other filing systems for the Egg Program; and
- Program Support - 0.072 FTE. Program support includes the section chief and additional data support services.

Total program expenditures for fiscal years 13-14 through 16-17 showed a slight upward trend in each year. According to CDA, this can predominantly be explained by salary increases for employees, since the FTE total per year remained relatively consistent leading up to fiscal year 17-18.

Licensing

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

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

The Egg Law defines a dealer under the Egg program as, "...any person who is engaged in selling eggs"⁴⁵ and all producers, wholesalers and dealers are required to obtain a dealer license from CDA (individuals selling less than 250 dozen eggs per month directly to consumers are regulated by the Colorado Cottage Foods Act and are not required to purchase a dealer's license).⁴⁶ There are currently seven separate categories of dealer licenses available, which are based upon average number of cases sold per week during the previous 12 months:⁴⁷

- Class I Producer/Dealer- Less than 3,000 domesticated chicken hens per egg producer with eggs sold to stores, restaurants, hospitals and other institutions;
- Class II Dealer - up to 0.5 cases per week (15 dozen eggs) and more than 3,000 hens;
- Class III Dealer - over 0.5 and up to 2 cases per week (over 15 and up to 60 dozen eggs) and more than 3,000 hens;

⁴⁵ § 35-21-101(6), C.R.S.

⁴⁶ § 25-4-1614(2)(b)(II), C.R.S.

⁴⁷ Colorado Department of Agriculture. *Application for Egg Dealer License*. Retrieved May 30, 2019, from <https://www.colorado.gov/pacific/sites/default/files/Fillable%20Egg%20Dealer%20Renewal%20License.pdf>

- Class IV Dealer - over 2 cases and up to 25 cases per week (over 60 and up to 750 dozen eggs) and more than 3,000 hens;
- Class V Dealer- over 25 cases and up to 100 cases per week (over 750 and up to 3,000 dozen eggs) and more than 3,000 hens;
- Class VI Dealer - over 100 cases and up to 500 cases per week (over 3,000 and up to 15,000 dozen eggs) and more than 3,000 hens; and
- Class VII Dealer - over 500 cases per week (over 15,000 dozen eggs) and more than 3,000 hens.

The Egg Program issues licenses on a calendar year basis. Table 2 provides the number of licenses issued from calendar years 2014 through 2018 for each of the seven dealer license class types.

**Table 2
Dealer Licenses Issued**

License Classifications	CY 2014	CY 2015	CY 2016	CY 2017	CY 2018
Class I	91	93	59	89	87
Class II	1,365	1,239	1,160	1,161	1,268
Class III	622	688	713	717	580
Class IV	259	236	262	262	231
Class V	419	416	419	406	381
Class VI	87	110	115	128	139
Class VII	39	38	40	39	44
Total	2,822	2,820	2,768	2,802	2,730

From calendar years 2014 to 2018, the total number of licenses issued for all license types remained relatively consistent. However, Class VI steadily increased each year of the years reviewed, while Class I dropped slightly.

Table 3 provides the 2019 license fees for each of the seven dealer license class types.

Table 3
Dealer License Fees⁴⁸

License Classifications	Dealer License Fees
Class I (Producer/Dealer)	\$25
Class II (Dealer)	\$20
Class III (Dealer)	\$40
Class IV (Dealer)	\$75
Class V (Dealer)	\$100
Class VI (Dealer)	\$200
Class VII (Dealer)	\$300

Each dealer within the state of Colorado is required to obtain and renew the appropriate class of license annually by December 31 each year.⁴⁹ In order to apply for licensure, each applicant must complete and submit an application to CDA including the required fee. Each application must contain:

- The applicant's name,
- The names of any members if the applicant is a firm,
- The names of any officers if the applicant is a corporation,
- The location and telephone number of the business,
- Any additional ownership information required by the Commissioner, and
- Any additional contact information required.

Inspections

The seventh sunset criterion requires COPRRR to examine whether complaint, investigation, and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession.

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

The USDA may perform inspections within Colorado egg production facilities. USDA-licensed graders may be utilized in production areas and distribution centers on either a full or part-time basis, or services may also be provided on a temporary basis when requested.⁵⁰

⁴⁸ Colorado Department of Agriculture. *Application for Egg Dealer License*. Retrieved May 30, 2019, from <https://www.colorado.gov/pacific/sites/default/files/Fillable%20Egg%20Dealer%20Renewal%20License.pdf>

⁴⁹ 8 CCR 1202-10-6.0, Rules Pertaining to the Administration and Enforcement of the Colorado Egg Law.

⁵⁰ United States Department of Agriculture, *Agricultural Handbook Number 75: Egg-Grading Manual*, (2000), p. 36-37.

Licensed egg dealers are also frequently inspected by CDA, utilizing procedures established by the USDA. The number of inspections performed for each dealer depends upon the amount of eggs sold by the dealer. In other words, the higher the production volume, the greater the potential risk to the public. Therefore, a greater number of inspections will be performed for dealers with higher volume. The number of eggs inspected is also determined by the lot number, which is a combination of the USDA producer number and the pack date. Once the number of eggs to be inspected is determined, the inspector randomly selects the applicable number of egg cartons to be evaluated.

Once the eggs to be inspected are selected, the inspector candles each egg to ensure that the grade of egg and egg size meet the established guidelines. Inspectors also look for defects in the eggs candled, including cracks, leakers, and dirty eggs. During the inspection, the washing, sanitizing, candling, packing, storage, and grading procedures are also evaluated to ensure that good practices are in place and regulatory compliance is being met. Producer, wholesale, and retail facilities are also inspected to ensure accurate labeling and product wholesomeness.⁵¹

Table 4 provides the total number of egg inspections performed by CDA, the total number of eggs inspected, and the total number of eggs, in dozens, that were issued a stop sale notice or rejected during fiscal years 13-14 through 17-18.

**Table 4
Total Egg Inspections**

Fiscal Year	Total Number of Inspections	Total Number of Eggs Inspected	Total Number of Eggs Rejected Due to Stop Sale Notices
13-14	592	69,831 Dozen	6,469 Dozen
14-15	960	102,598 Dozen	10,478 Dozen
15-16	893	83,999 Dozen	5,611 Dozen
16-17	678	38,684 Dozen	4,049 Dozen
17-18	762	Not Available	1,946 Dozen
Total	3,885	295,012 Dozen	28,553 Dozen

The data provided in Table 4 demonstrate a discrepancy in reporting of data during fiscal year 17-18. CDA has explained that a new license database is being utilized as of fiscal year 17-18 to track data within the program. The new database does not capture the total number of eggs inspected, which creates a discrepancy of data from previous years. The new database does capture the total number of eggs rejected due to stop

⁵¹ Colorado Department of Agriculture. *Eggs*. Retrieved July 17, 2019, from <https://www.colorado.gov/pacific/aginspection/eggs>

sales, which can be compared to previous years' data. Due to the new database, some tracked data components will be modified in future reporting.

CDA recently determined that data input instructions and training provided to the inspection staff when using the new database resulted in the underreporting of the number of stop sale notices issued. CDA has corrected the data and the inspection staff have been re-trained thereby remedying the underreporting.

Complaint and Disciplinary Activity

The seventh sunset criterion requires COPRRR to examine whether complaint, investigation, and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession.

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

The Commissioner is authorized to enforce the Egg Law, and can take a variety of disciplinary actions for violations. Although no complaints were received during the period of this review, inspections are regularly performed and such violations may be identified through this process.

If it is determined through the course of the inspection that the samples of the egg lot have not met established standards, a stop sale order may be issued. When a stop sale is ordered, no egg that is considered a part of the stop sale notice may be sold or otherwise disposed of until the stop sale notice has been cancelled by the Commissioner or the Commissioner's authorized agent.⁵² An authorized agent may also seize and hold as evidence, any eggs that are considered in violation of the Egg Law.

Table 5 indicates the total number of stop sale notices issued for fiscal years 13-14 through 17-18.

Table 5
Total Stop Sale Notices Issued

Fiscal Year	Total Number of Stop Sale Notices Issued
13-14	23
14-15	20
15-16	16
16-17	9
17-18	37

⁵² § 35-21-106(2)(b), C.R.S.

It is worth noting that the number of stop sale notices issued steadily declined from fiscal year 13-14 to fiscal year 16-17 due in part to inspector attrition and new hire training, according to CDA.

Although none were issued during the period under review, the Commissioner may impose legal remedies, fines, and civil penalties for violations that merit a higher degree of disciplinary action beyond the issuance of a stop sale notice.

Section 35-21-107(1), C.R.S., states that any person who violates the Egg Law is guilty of a misdemeanor, and may be punished with a fine of not more than \$500. Each calendar day is also to be considered a separate violation, with a fine of not more than \$500.

Section 35-21-107.5(1)(a), C.R.S., also states that the Commissioner has the authority to impose a civil penalty for any person who violates a provision of the Egg Law or any rules promulgated under the Egg Law. The civil penalty shall not exceed \$750 per day, per violation. Any civil penalties collected are deposited into the inspection and consumer services cash fund.

Collateral Consequences - Criminal Convictions

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

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

Currently, no statutory authority exists within the Egg Law for the Commissioner to impose sanctions or disqualifications based upon criminal history.

Analysis and Recommendations

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

Recommendation 1 - Continue the regulation of poultry eggs for 11 years, until 2031.

The first sunset criterion asks whether regulation is necessary to protect the public health, safety and welfare. The purpose of the Egg Law is to protect consumers from the potential harm related to foodborne illness in shell eggs. If not properly sanitized, handled, packaged and refrigerated, harmful bacteria such as Salmonella may develop which can cause serious sickness if ingested. Additionally, if proper care and sanitation methods are not regularly employed with egg-producing bird flocks, viral pathogens can develop which could lead to both bird and human infection.

Even in recent years, Coloradans have experienced instances of Salmonella exposure due to shell egg ingestion. In 2010, two cases of Salmonella Enteritidis were reported due to egg consumption from a specific restaurant. The investigation confirmed that these cases of Salmonella exposure were a part of a larger, multi-state outbreak. In 2018, a Colorado citizen was exposed to Salmonella Enteritidis due to egg consumption while visiting another state; this case was also a part of a multi-state outbreak.

The Egg Law, section 35-21-101, *et seq.*, Colorado Revised Statutes (C.R.S.), strives to protect consumers from these types of harm. Program staff work to ensure that the quality standards enacted by the U.S. Department of Agriculture (USDA) are met through the promulgation of licensure requirements and the performance of regular inspections. These processes help to ensure that eggs sold to consumers meet regulatory requirements for both sanitation and safety.

In addition, the Colorado Commissioner of Agriculture (Commissioner) has authorized stop sale notices, and can issue civil fines or impose legal penalties if it is determined that a batch of shell eggs made available to consumers could pose a risk due to the violation of any regulatory requirements related to improper labelling, sanitation, handling and refrigeration.

The General Assembly should continue the Egg Law for 11 years, until 2031, since the Egg Program protects the public from harm and very few substantive changes to the Egg Law have been recommended.

Recommendation 2 - Relocate the regulatory authority for other types of shell eggs from the Colorado Department of Public Health and Environment to the Egg Law, define “other eggs” in the Egg Law, and require the Commissioner to promulgate rules related to other egg types.

“Poultry eggs” “shell eggs” and “eggs” are currently defined in the Egg Law as, “shell eggs of the domesticated chicken.”⁵³ However, other types of shell eggs from other egg-producing flocks are regularly consumed by Coloradans, such as duck, turkey and quail eggs.

Due to the lack of statutory authority within the Egg Law for the Commissioner to regulate other egg types, the Colorado Department of Public Health and Environment (CDPHE) presently regulates and inspects these additional shell egg types within its Manufactured Food Program. As a result, licensing fees, processes and regulatory procedures vary based upon egg type and the agency rules established for each of the two separate programs.

The fourth sunset criterion asks whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively. Sharing the current regulatory mechanism for egg regulation between two state agencies is duplicative, and may create confusion and regulatory burdens for egg producers, dealers and consumers. For example, since the Commissioner does not currently have statutory authority to regulate any shelled eggs other than chicken eggs, other varieties of eggs are currently regulated by CDPHE under the Manufactured Foods Program.

Since registration fees under the Manufactured Food Program are the same for any food type under this regulatory mechanism, and since the majority of other egg producers yield a smaller amount of eggs annually than many chicken egg producers, registration fees for other egg types are significantly more expensive on average (\$160 per registration) than chicken egg dealer/producer licenses in the Egg Program (\$20 for the small Class I license, up to \$300 for the largest Class VII dealer license).

Additionally, integrating other shell egg types under the Egg Law will ensure consistent inspection timeframes and uniformity in inspection processes. Therefore, additional regulatory effectiveness and efficiency can occur by placing the regulatory authority of all types of eggs within the schema of the Egg Law.

In order for the Egg Program to oversee these other types of eggs within the statutory authority provided in the Egg Law, an additional definition of “other eggs” should be added. The current definition of “poultry eggs”, “shell eggs” and “eggs” should remain intact, indicating that these types of eggs specifically reference “chicken eggs” in order to maintain consistency with USDA standards and regulations relating to chicken eggs. However, a definition of “other eggs” should be added to the Egg Law indicating that “other eggs” include all other eggs of avian species. The addition of this definition

⁵³ § 35-21-101(15), C.R.S.

would allow all other types of bird shell eggs to be regulated by the Commissioner under the Egg Law.

Lastly, the General Assembly should provide the Commissioner with the authority to promulgate rules for the regulation of other egg types. USDA egg standards were developed specifically for chicken eggs, and other egg producers typically do not produce on the same scale as chicken egg producers, creating a need for unique rules to be purposely developed for other egg types.

For these reasons, the General Assembly should amend the Egg Law to include other types of eggs and authorize the Commissioner to promulgate rules that can be appropriately tailored to other egg types.

Recommendation 3 - Direct that all monies collected by the Commissioner as the result of civil penalties assessed under the Act be deposited in the state's General Fund.

Section 35-21-107.5(4), C.R.S., directs that all money collected from any civil penalty assessed pursuant to the Egg Law be credited to the Inspection and Consumer Services Cash Fund.

Ordinarily, when an agency is given fining authority, or the authority to assess civil penalties, such funds are credited to the state's General Fund. This is done so that the agency has no incentive to impose fines, other than taking legitimate disciplinary action. Examples of programs adhering to this principle include those regulating collection agencies, accountants, pharmacists and pharmacies, professional engineers, professional land surveyors, architects, chiropractors, lay midwives, physical therapists, and veterinarians to name a few.

The third sunset criterion asks 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. Although no fines were issued by the program within the years evaluated for the purpose of this review, the regulatory mechanism is in place within the Egg Law to do so. The public interest would be enhanced by directing the funds generated through the imposition of civil penalties back to the General Fund, creating further budgetary transparency and financial efficiency.

For these reasons, the General Assembly should direct that all future monies collected by the Commissioner as a result of civil penalties assessed under the Egg Law be deposited in the state's General Fund.