



COLORADO

**Department of
Regulatory Agencies**

Colorado Office of Policy, Research &
Regulatory Reform

**2018 Sunset Review:
Regulation of Public Livestock Markets**

October 15, 2018



COLORADO

**Department of
Regulatory Agencies**

Executive Director's Office

October 15, 2018

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 public livestock markets. I am pleased to submit this written report, which will be the basis for COPRRR's oral testimony before the 2019 legislative committee of reference.

The report discusses the question of whether there is a need for the regulation provided under Article 55 of Title 35, C.R.S. The report also discusses the effectiveness of the State Board of Stock Inspection Commissioners and the Colorado Department of Agriculture's Brand Inspection Division 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

2018 Sunset Review Regulation of Public Livestock Markets

SUMMARY

What is regulated?

The State Board of Stock Inspection Commissioners (Brand Board), housed in the Colorado Department of Agriculture (CDA) licenses public livestock markets. A public livestock market is a place, operated for compensation, where horses, mules, cattle, burros, swine, sheep, goats, poultry, and/or alternative livestock are available for sale.

Why is it regulated?

The Brand Board predates Colorado statehood. Its responsibility is to inspect equine, bovine, and alternative livestock to verify ownership and prevent theft.

Who is regulated?

As of March 2018, there were 34 public livestock markets licensed by the Brand Board, 16 (37.2 percent) of which sold livestock at least one day per week while the remainder operated less often, and 9 (20.9 percent) operated only one time per year.

How is it regulated?

To obtain a license, an applicant must provide:

- A completed application received and approved by the Brand Board.
- A copy of the contract with an approved veterinarian.
- A description of the physical facility and proof of control of the facility.
- A request asking for Brand Board approval for dates to sell livestock.
- Financial surety worth at least \$25,000.
- A CDA Farm Products License.

What does it cost?

The Brand Board is a Type I, cash-funded enterprise. Because animal identification is the foundation of every program under its authority, the Brand Board does not explicitly segregate revenues and expenditures by program. The Brand Inspection Division of the CDA estimates that it expends approximately \$750,000 annually and allots 11 full-time equivalent employees regulating public livestock markets.

What disciplinary activity is there?

There were no formal complaints levied or disciplinary actions taken against public livestock markets during the period examined for this sunset review.

KEY RECOMMENDATIONS

Continue the regulation of public livestock markets for 15 years, until 2034.

Public livestock markets are places where a confluence of multiple layers of business and regulation occur: the Brand Board's major charge is to verify livestock ownership; the federal government has an interest in the financial components of transactions to promote competitive and fair business practices through the Packers & Stockyards Act of 1921; an animal's fitness for sale is determined by a veterinary inspection; and livestock is presented for sale by private owners. Given that there are many legally required practices that must occur at a point of sale and that many sales take place at public livestock markets, it is reasonable to conclude that public livestock markets should be regulated.

METHODOLOGY

As part of this review, Colorado Office of Policy, Research and Regulatory Reform staff attended Brand Board meetings; interviewed CDA staff, Brand Board members, and regulators from other states; reviewed records; interviewed officials with state and national professional associations; and reviewed federal laws, Colorado statutes and rules, and the laws of other states.

MAJOR CONTACTS MADE DURING THIS REVIEW

Colorado Cattlemen's Association
Colorado Dairy Farmers
Colorado Department of Agriculture, Brand Inspection Division
Colorado Livestock Association
Colorado State Veterinarian
Livestock Marketing Association
State Board of Stock Inspection Commissioners
State Board of Veterinary Medicine
U.S. Department of Agriculture-Packers & Stockyards Program

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 State Board of Stock Inspection Commissioners (Brand Board) as enumerated in Article 55 of Title 35, Colorado Revised Statutes (C.R.S.), shall terminate on July 1, 2019, unless continued by the General Assembly. During the year prior to this date, it is the duty of COPRRR to conduct an analysis and evaluate the regulation of public livestock markets 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 Colorado Department of Agriculture's Brand Inspection Division (Division). During this review, the Brand Board 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, Colorado Office of Policy, Research and Regulatory Reform staff attended Brand Board meetings; interviewed Division staff, Brand Board members, and regulators from other states; reviewed records; interviewed officials with state and national professional associations; and reviewed federal laws, Colorado statutes and rules, and the laws of other states.

Profile of Colorado Brand Inspection and Public Livestock Markets

The Brand Board predates Colorado statehood; it became a state agency in 1903, and became part of the Department of Agriculture in the 1970s.² Its responsibility since its inception has been to inspect equine and bovine animals to verify ownership. Now that charge includes alternative livestock animals. The duty of the Brand Board is to verify ownership and prevent theft.

According to the Colorado Department of Agriculture, animal identification inspection deters theft, facilitates commerce, protects livestock producers and lenders, provides accurate tracking of livestock movements for use in disease traceability, facilitates the return of stolen or stray livestock, and helps keep the livestock industry healthy and viable.³

In addition to the licensing of public livestock markets, which is the subject of this sunset review, the Brand Board has statutory responsibility for animal identification in many settings, including:

- Section 35-41.5-101, *et seq.*, C.R.S., *Alternative Livestock Act*, establishes the Brand Board as the regulatory body charged with oversight of alternative domestic livestock operations.
- Section 35-43-101, *et seq.*, C.R.S., *Branding and Herding*, establishes laws for branding types and processes, recording, uses, assessment, and counterfeiting of brands in Colorado.
- Section 35-44-101, *et seq.*, C.R.S., *Estrays*, determines Brand Board procedures for identifying, determining ownership, and selling stray bovine, equine, or alternative livestock animals.
- Section 35-53-101, *et seq.*, C.R.S., *Transportation of Livestock*, codifies brand inspection procedures, times, and places including restating a provision that all cattle must be inspected on arrival at a market.
- Section 35-53.5-101, *et seq.*, C.R.S., *Feedlot Certification*, charges the Brand Board with adopting rules to certify and regulate feed lots.
- Section 35-54-101, *et seq.*, C.R.S., *Sale of Stock*, requires a detailed bill of sale in all livestock transactions noting species, markings, sex, age, and breed among other particulars. Selling without a bill of sale constitutes theft.

Public livestock markets are also known as sale barns, sale rings, auction houses, stockyards, and other local names. A public livestock market is a place, establishment, or facility operated for compensation or profit where livestock – defined in statute as horses, mules, cattle, burros, swine, sheep, goats, poultry, and alternative livestock – is received, held, or assembled for sale.⁴

² Colorado Department of Agriculture, *History*. Retrieved November 17, 2017, from <https://www.colorado.gov/pacific/agbrands/history-7>

³ *Ibid.*

⁴ § 35-55-101, C.R.S.

Regardless of what they are called, the markets operate similarly. Livestock is consigned to the operator, undergoes veterinary and identification inspections,⁵ is usually marketed for sale to an audience rather than to individuals, and then purchased. During the sunset review period, fiscal year 12-13 through fiscal year 16-17, 3,035,261, approximately 17 percent, of all animal identification inspections performed in Colorado were at public livestock markets. The most frequent operating situations involve immature cattle consigned to the market operator by a cow/calf producer, which are then purchased by a party which raises the animals to maturity. Once mature, the animals are sold for slaughter. While this is the typical situation, it is not the rule. All species of domestic livestock are consigned to public livestock market facilities and sold. Dairy cattle, breeding stock, horses, mules, and burros, sheep and goats, hogs, and, rarely, alternative livestock such as domestic elk and fallow deer are sold through the facilities.

Colorado is home to 11,600 farms with cattle and calves. Livestock contributes \$3.7 billion to the state's economy and cattle account for 75 percent of that amount.⁶ Colorado ranks high nationally in the number of cattle and calves (11th) and sheep and lamb crops (3rd).⁷

As of March 2018, there were 34 licensed public livestock markets in Colorado. There are also internet and video auctions which are not licensed under the public livestock market statutes unless payment is made through the operator of the internet/video site, i.e., there is a consigned or brokered relationship. The requirement for an animal identification inspection exists for all equine, bovine, and alternative livestock transactions, whether or not the transaction occurs at a public livestock market.

⁵ A veterinary inspection is not the same as a veterinary examination. In this case the veterinarian, hired by the public livestock market operator, visually inspects the animal to determine if it has any obvious functional issues. The inspection is not a certification that the animal is indeed healthy.

⁶ Colorado Cattlemen's Association. *Colorado Beef Statistics*. Retrieved March 13, 2018, from <https://www.coloradocattle.org/coloradobeefstatistics.aspx>

⁷ U.S. Department of Agriculture. *2017 State Agriculture Overview*. Retrieved March 13, 2018, from https://www.nass.usda.gov/Quick_Stats/Ag_Overview/stateOverview.php?state=COLORADO

Legal Framework

History of Regulation

State oversight of public livestock markets began in Colorado in 1937 with the regulation of livestock sale rings. The State Board of Stock Inspection Commissioners (Brand Board) has had regulatory jurisdiction over the licensing of public livestock markets since that time and implements regulation through the Division of Brand Inspection (Division) of the Colorado Department of Agriculture.

The Brand Board's chief charge is to inspect animals to verify ownership of equine, bovine, and alternative livestock.⁸ Beginning in 1963, state law has mandated animal identification inspection for virtually all livestock prior to transport and sale. Brand inspections also aid other identification programs by providing an ability to trace animals to their herd of origin.

Since statute enactment, the courts have played a part in determining the roles that the Brand Board and the licensees play in transactions. They have continually reaffirmed that it is the Brand Board's charge to determine animal ownership for both the seller and the buyer. In public livestock market transactions, the licensee is consigned the animals for brokered sales. That licensee guarantees title to the purchaser based on the results of an animal identification inspection.

The courts have also opined concerning law enforcement discretion and adherence. As a licensee, a market operator must comply with all duties and responsibilities determined by the statute and Brand Board-promulgated rules. Likewise, the Brand Board is not allowed any discretion in enforcement. Decisions indicate that if there is a violation, then there needs to be discipline. These rulings enhanced the notion that the Brand Board is the sole authority in determining animal ownership in Colorado.

Legal Summary

Federal Oversight

Federal regulation of public livestock markets is informed by the Packers & Stockyards Act, 1921 (PSA).⁹ The PSA is administered through the U.S. Department of Agriculture's Grain Inspection, Packers & Stockyards Administration (GIPSA). GIPSA has policies regarding:¹⁰

- Registration,
- Bond,
- Trust accounts,
- Tariff,

⁸ § 35-41.5-102(1), C.R.S., defines alternative livestock as domesticated elk or fallow deer.

⁹ 7 U.S.C. ch.9 § 181, *et seq.*

¹⁰ U.S. Department of Agriculture. *Market Agency Selling on Commission (SOC) or Stockyard Owner*. Retrieved November 17, 2017, from <https://www.gipsa.usda.gov/psp/markets.aspx>

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- Prompt payment,
 - Scales,
 - Weighing,
 - Unfair practices,
 - Records,
 - Annual reports,
 - Inspection of business records and facilities, and
 - Posting of public notices.

All Colorado public livestock market regulation exists under the umbrella established by the PSA. The PSA requires that entities engaged in the business of marketing livestock, meat, and poultry are directed by the PSA, including: stockyard owners, market agencies, dealers, packers, swine contractors, and live poultry dealers.¹¹

The State Board of Stock Inspection Commissioners

Section 35-41-101, *et seq.*, Colorado Revised Statutes (C.R.S.), establishes the Brand Board and authorizes it to create rules necessary to inspect livestock for identification. The Brand Board is the state regulatory authority for public livestock markets.

Colorado Public Livestock Markets

Article 55 of Title 35, C.R.S., regulates public livestock markets and for the purposes of this report is referred to as the “Act.” The Act addresses the licensing and operation of public livestock markets in Colorado. Generally, a public livestock market is a place, establishment, or facility operated for compensation or profit where livestock (horses, mules, cattle, burros, swine, sheep, goats, poultry, and alternative livestock) is received, held, or assembled for sale.¹²

Beyond defining what livestock and livestock markets are, the Act approaches the regulation of the markets in two ways – through licensing and inspections. The majority of the provisions in the Act concern business practices and procedures with regard to licensing, bonding, and disciplinary actions. Inspection-oriented practices and procedures constitute the remaining regulatory pieces in the Act.

LICENSING

To obtain and maintain a license to operate a public livestock market in Colorado, which is valid for one year, a person or entity must meet certain specified conditions including:¹³

- Disclose all parties with a financial interest in the public livestock market;
- Demonstrate financial viability, stability, and responsibility of the applicant;
- Have the ability to comply with the PSA;

¹¹ U.S. Department of Agriculture. *Regulated Entities Under the Packers & Stockyards Act*. Retrieved November 17, 2017, from <https://www.gipsa.usda.gov/psp/regulated.aspx>

¹² § 35-55-101, C.R.S.

¹³ § 35-55-102, C.R.S.

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- Control real property where improvements meet specifications regarding animal holding and inspection;
 - Use all forms required by the Brand Board¹⁴ to complete any livestock transaction; and
 - Operate the public livestock market only on the day(s) the Brand Board approves the market to operate.

If an applicant's license is denied by the Brand Board, for not meeting license requirements or for disciplinary reasons, there is an appeals process. However, the validity of any appeal of a license denial is determined by the Brand Board and any hearing is adjudicated by the Brand Board.

FEES AND BOND

The public livestock market operator must pay a \$200 licensing fee to obtain a license to operate, upon approval of an application by the Brand Board.¹⁵ Renewal must be completed prior to May 1 of each succeeding year with reapplication, approval, and payment of the licensing fee. All licensing fees are placed in the Brand Inspection Fund to pay Brand Board and Division operating expenses.¹⁶ Either the original or a certified copy of the license must be posted, in a conspicuous place, on public livestock market premises during livestock sales.¹⁷

A license applicant must be indemnified in an amount to be determined by the Brand Board which is based on the dollar volume of business transacted by the public livestock market. Each business must be bonded by a Brand Board-approved surety company or have the predetermined amount of cash available. The minimum amount is \$25,000.¹⁸ The aggregate liability in actions taken against the bond may not exceed the sum of the bond.¹⁹ If a public livestock market is registered and bonded under the PSA and the bond guarantees payment of all Colorado animal identification and sanitary inspection fees, then no other bond is required.²⁰

DISCIPLINE

The Brand Board may place a licensee on probation, or revoke or suspend a license for any violation of the Act or any rule instituted by the Brand Board, including but not limited to: shipment, facility sanitation, recordkeeping, and fraud.²¹ The Brand Board must employ administrative law judges to conduct hearings to determine whether to place a licensee on probation or revoke or suspend the license, for a licensee in violation of the Act.²² If, after investigation, a local district attorney finds a violation of the Act

¹⁴ The Brand Board is created by § 35-41-101 *et seq.*, C.R.S., and is empowered to create rules and implement and enforce provisions of Article 55 by § 35-55-106, C.R.S.

¹⁵ 8 CCR 1205 §-6-6.1, State Board of Stock Inspection Commissioners

¹⁶ § 35-55-115, C.R.S.

¹⁷ § 35-55-105, C.R.S.

¹⁸ § 35-55-104(1), C.R.S.

¹⁹ § 35-55-104(2), C.R.S.

²⁰ § 35-55-104(3), C.R.S.

²¹ § 35-55-107(1), C.R.S.

²² § 35-55-108(2), C.R.S.

has occurred within its jurisdiction, then that office must take legal action on the violation. However, the Brand Board, on its own initiative or as the result of a complaint, may prosecute any violation in district court through the Office of the Colorado Attorney General.²³

INSPECTIONS

FACILITY INSPECTIONS

There is no formal facility inspection authority bestowed in statute to the Brand Board. Nonetheless, section 35-55-109, C.R.S., states that all Colorado public livestock markets must be kept in a clean and sanitary condition. If it is deemed to not be in an appropriate condition it must be cleaned under the direction of a Brand Board-approved veterinarian. The Act is unclear as to who would make the determination that the market is not clean and sanitary.

All scales used in the operation of a public livestock market are regulated under Colorado's weights and measures laws.²⁴ Scale accuracy is verified by the Department of Agriculture's Inspection and Consumer Services Division under the Measurement Standards Act of 1983.²⁵

Detailed records concerning all specific transactions, animal care and handling actions, and gross figures concerning numbers of animals and sales by a facility must be kept by the licensee and be easily accessible for inspection by a Brand Board designee.²⁶

ANIMAL IDENTIFICATION INSPECTION

True ownership and health of livestock are issues of major interest to both the principals in a transaction and state regulators. The Act specifically considers these matters as an animal enters a public livestock market, while it is held there, and before it may leave the premises.

Upon consignment for sale to a public livestock market, all cattle, horses, mules, and burros must be inspected by a Brand Board-approved brand inspector. In all cases, it is the responsibility of the consignor to prove ownership to the brand inspector. This may be achieved by many methods but it is the brand inspector who determines if the sale of a given animal will be allowed. The inspector certifies animal ownership for both the facility operator, as a prerequisite for the owner to issue a bill of sale to a buyer, and for the Brand Board. The animal identification inspection fee comes out of sale proceeds.²⁷

The operator of a public livestock market provides title warranty to the purchaser of any livestock sold at the facility. If the brand inspector has an issue concerning ownership of an animal, the market operator must hold all sale proceeds until ownership is established.²⁸

²³ § 35-55-117, C.R.S.

²⁴ § 35-55-110, C.R.S.

²⁵ § 35-14-101, *et seq.* C.R.S.

²⁶ § 35-55-111, C.R.S. The designee is typically the brand inspector but does not have to be.

²⁷ § 35-55-112, C.R.S.

²⁸ § 35-55-114, C.R.S.

Veterinarian Inspection

All livestock presented for sale at a licensed facility must undergo inspection by an authorized veterinarian,²⁹ who is paid by the licensee. The determination of fitness must be made prior to any animal being allowed to leave the facility. The veterinarian is empowered by the Act to permit movement, quarantine the animal, and/or euthanize based on the inspection results. If euthanizing is necessary, the cost of the procedure is the responsibility of the consignor. In all cases, veterinarians and market operators must adhere to federal laws, rules, and regulations concerning animal shipment and health.³⁰

²⁹ A veterinary inspection is not the same as an veterinary examination. In this case the veterinarian, hired by the public livestock market operator, visually inspects the animal to determine if it has any obvious functional issues. The inspection is not a certification that the animal is indeed healthy.

³⁰ § 35-55-113, C.R.S.

Program Description and Administration

The act which regulates public livestock markets is in Article 55, of Title 35, Colorado Revised Statutes (C.R.S.), herein referred to as the “Act.” The Act is implemented by the Brand Commissioner (Commissioner), who leads the Division of Brand Inspection (Division) in the Colorado Department of Agriculture (CDA). The Commissioner and Division are directed by the Type 1, Governor-appointed, five-member State Board of Stock Inspection Commissioners (Brand Board).

The Brand Board is a Type 1, cash-funded enterprise. Because animal identification is the foundation of every program under its authority, the Brand Board does not explicitly segregate revenues and expenditures according to its separate tasks. The Division operates from one fund based on the animal inspection fees it receives from all sources. The Division estimates, combining both full- and part-time brand inspectors located throughout the state, administrative staff, and the number of animal identifications performed at public livestock markets, that it expends approximately \$750,000 annually and allots 11 full-time equivalent employees regulating public livestock markets. Beyond estimates of this nature, it is impossible to know what money is being spent on this specific program.

The fundamental concern in public livestock market regulation is the identification of equine, bovine, and alternative livestock ownership. The Brand Board licenses facilities and inspects animals as they enter a public livestock market to determine ownership before they are sold. It is the responsibility of the consignor to prove ownership to the brand inspector.

In cases where the ownership of an animal cannot immediately be determined by the brand inspector, or an owner brings to market an animal that is not owned by the consignor, the brand inspector has some discretion on how to proceed. The ultimate goal is to determine ownership and to guarantee title for the purchaser. If the inspector chooses, he/she can pull the animal out of the sale until research is complete or let the sale go forward and hold the sale proceeds pending the consignor proving ownership to the inspector’s satisfaction. If the brand inspector does determine ownership, then the money will be dispersed to both the market operator and ultimately the consignor. If rightful ownership of an animal cannot be determined by the brand inspector within 30 days, then the money is forwarded to the Commissioner to be deposited in the Estray Fund established in section 35-41-102, C.R.S. The Brand Board can hold the funds for six years or until ownership can be determined by the Commissioner. After six years the money is transferred into the Brand Board’s cash fund, which is named the Brand Inspection Fund, and used for Brand Board operations.³¹

³¹ § 35-41-102(1), C.R.S.

Because the crux of regulation concerns animal identification, there is overlap with other Colorado statutes administered by the Brand Board which involve brand inspection:

- Section 35-41.5-101, *et seq.*, C.R.S., *Alternative Livestock Act*, establishes the Brand Board as the regulatory body charged with oversight of alternative domestic livestock operations.
- Section 35-43-101, *et seq.*, C.R.S., *Branding and Herding*, establishes laws for branding types and processes, recording, uses, assessment, and counterfeiting of brands in Colorado.
- Section 35-44-101, *et seq.*, C.R.S., *Estrays*, determines Brand Board procedures for identifying, determining ownership, and selling stray bovine, equine, or alternative livestock animals.
- Section 35-53-101, *et seq.*, C.R.S., *Transportation of Livestock*, codifies animal identification inspection procedures, times, and places including restating a provision that all cattle must be inspected on arrival at a market.
- Section 35-53.5-101, *et seq.*, C.R.S., *Feedlot Certification*, charges the Brand Board with adopting rules to certify and regulate feed lots.
- Section 35-54-101, *et seq.*, C.R.S., *Sale of Stock*, requires a detailed bill of sale in all livestock transactions noting species, markings, sex, age, and breed among other particulars. Selling without a bill of sale constitutes theft.

According to sections 35-55-112 and 35-55-113, C.R.S., when most animals are consigned to a public livestock market for sale, they must undergo two inspections. The facility-employed, CDA-approved veterinarian looks at every animal, regardless of species, to determine that it is able-bodied enough for sale, while the Brand Board-employed brand inspectors inspect cattle, horses, mules, burros, and alternative livestock for ownership either by identification of a brand or other means. If an animal passes these inspections, it can be sold without issue and the market operator can guarantee title. Concerning livestock species not inspected by the brand inspector, a paper trail, such as a detailed bill of sale, is sufficient to determine ownership.

Licensing

As of March 2018, there were 34 public livestock markets licensed by the Brand Board, 16 (37.2 percent) of which sold livestock at least one day per week while the remainder operated less often, and 9 (20.9 percent) operated only one time per year. The Brand Board also determines days that a licensee is able to operate.³² There are also internet and video auctions which are not licensed by the Brand Board because they do not operate from a specific market location.

³² § 35-55-102(6), C.R.S.

Table 1 lists the number of public livestock market licenses issued annually during the period examined for this sunset review.

Table 1
Licensed Public Livestock Markets
Fiscal Years 12-13 through 16-17

Fiscal Year	New	Renewal	Total
12-13	4	31	35
13-14	1	33	34
14-15	3	31	34
15-16	1	35	36
16-17	0	32	32

Table 1 indicates that the number of markets licensed is stable. Generally, if one closes it is offset by another opening.

To obtain a license, an applicant must provide:

- A completed application.
- A copy of the contract with an approved veterinarian.
- Information describing the physical facility and proof of control of the facility such as a lease.
- A request asking for Brand Board approval for dates to sell livestock.
- Financial surety, \$25,000 minimum, required by both the Act³³ and the federal Packers & Stockyards Act of 1921 (PSA),³⁴ with the Commissioner or the Brand Board named trustee.
- A Farm Products License issued by CDA's Division of Inspection and Consumer Services.

Prior to license issuance, the Brand Board notifies the applicant of the rules and regulations concerning recordkeeping, transaction requirements, animal identification, and segregation among other actions required by an operator to run a livestock market.

The fee for a license is \$200 and it expires on April 30 regardless of when it is issued. A renewed license is effective beginning May 1.

³³ § 35-55-104, C.R.S.

³⁴ U.S. Department of Agriculture. *Market Agency Selling on Commission (SOC) or Stockyard Owner*. Retrieved March 13, 2018, from <https://www.gipsa.usda.gov/psp/markets.aspx>

Inspections

Brand

Brand inspectors inspected more than 3 million animals during the period examined for this sunset review. There is no animal identification inspection of hogs, goats, sheep, or other non-equine, bovine, or alternative livestock animals sold at public livestock markets. Therefore, that total does not include those livestock species nor does it include information relating to veterinarian or facility inspections.

Brand inspectors inspected, on average, approximately 607,000 animals at public livestock markets annually during the period examined for this sunset review. Cattle made up 99 percent of those animals and horses made up most of the remaining one percent.

In cases where the ownership of an animal cannot immediately be determined by the brand inspector, or an owner brings to market an animal that is not owned by the consignor, the brand inspector has some discretion on how to proceed. The ultimate goal is to determine ownership and to guarantee title for the purchaser. If the inspector chooses, he/she can pull the animal out of the sale until research is complete or let the sale go forward and hold the sale proceeds pending the consignor proving ownership to the inspector's satisfaction. If the brand inspector does determine ownership, then the money will be dispersed to both the market operator and ultimately the consignor. If rightful ownership of an animal cannot be determined by the brand inspector within 30 days, then the money is forwarded to the Commissioner to be deposited in the Estray Fund established in section 35-41-102, C.R.S. The Brand Board can hold the funds for six years or until ownership can be determined by the Commissioner. After six years, the money is transferred into the Brand Board's cash fund, which is named the Brand Inspection Fund, and used for Brand Board operations.³⁵

Veterinarian

Veterinarian inspections are required under the Act³⁶ but not performed by Division personnel. The inspections are performed by CDA-approved veterinarians retained by the public livestock market. The overwhelming majority of the animals that go through the markets are fit. In the cases where the veterinarian determines that an animal is not fit, he/she condemns the animal and orders that it be destroyed. The veterinarian then records and sends to the Colorado State Veterinarian the record of any animals ordered removed from public livestock markets. However, there is no such record transfer required when an animal is ordered to be euthanized nor does a central database exist to keep track of instances of disease.

³⁵ § 35-41-102(1), C.R.S.

³⁶ 8 CCR § 1201-13-3.1, Public Livestock Market Veterinary Inspection Rules.

Complaints and Discipline

There were no formal complaints filed against any public livestock markets during the period examined for this sunset review. On occasion, a complaint comes to the Commissioner's office concerning public livestock operations or a brand inspector's conclusions related to title and/or held sales proceeds. However, these issues are generally resolved quickly without formal action and because of that, there were no formal actions taken against licensed facilities during the period under review.

Because a license is a one-year privilege, issues tend to be taken seriously and fixed immediately. The goal is to keep licensees in voluntary compliance rather than punish them for minor issues and force compliance. The Commissioner's office regards the lack of formal disciplinary actions as a positive situation indicating a law-abiding population of licensees.

Collateral Consequences - Criminal Convictions

Section 24-34-104(6)(b)(IX), C.R.S., requires the 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.

There are no provisions of the Act that address disqualifications based on criminal history.

Analysis and Recommendations

Recommendation 1 - Continue the regulation of public livestock markets for 15 years, until 2034.

The licensing of public livestock markets in Colorado occurs under the auspices of Article 55 of Title 35, Colorado Revised Statutes (C.R.S.), herein referred to as the “Act.” The State Board of Stock Inspection Commissioners (Brand Board) and the Colorado Department of Agriculture’s Brand Inspection Division (Division) are directed to implement the Act.

Public livestock markets are places where a confluence of multiple layers of business and regulation occur: the Brand Board’s major charge is to verify livestock ownership; the federal government has an interest in the financial components of transactions to promote competitive and fair business practices through the Packers & Stockyards Act of 1921(PSA); an animal’s fitness for sale is determined by a veterinary inspection; and livestock is presented for sale by private owners.

At times there may be a single animal presented for sale by an owner, there may be hundreds presented by a single owner, there may be multiple owners presenting, or there may be combinations of the above. Generally, the animals sold at these facilities are cattle but any species of livestock may be sold.

Given that there are many legally required practices that must occur at a point of sale and that many sales take place at public livestock markets, it is reasonable to conclude that public livestock markets should be regulated. The degree to which the state regulates must be considered. This is especially so given that in addition to a public livestock market license, an operator must obtain a farm products license which is also issued by the Colorado Department of Agriculture.

The licensing of public livestock markets requires an application, surety to satisfy the PSA, an address where the operator conducts business, a copy of a contract between the operator and a veterinarian, and approval of sale dates. There was an average of 34 public livestock markets licensed annually during the period examined for this sunset review.

In addition to these licensing prerequisites, a licensee may be admonished by the Brand Board for actions that are specified in the Act. Prohibited actions are related to the transporting and holding of livestock, sanitation and health issues, recordkeeping, and fraud, among others. During the time covered by this sunset review, there were no formal complaints made against licensees and, therefore, there were no disciplinary actions taken.

The analytical criteria that statute instructs a sunset review to consider first 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;

For the reasons stated above, this analysis concludes that regulation is necessary. However, because the likelihood for harm is slight and there is little for the General Assembly to examine in an ongoing manner, the General Assembly should continue the program for 15 years, until 2034.

Recommendation 2 - Update license financial provisions to require surety an amount that satisfies the PSA.

Among the requirements for obtaining a license to operate a public livestock market are that the entity prove “financial stability, business integrity, and fiduciary responsibility.”³⁷ It also requires a statement of assets and liabilities and “proof of the ability of the applicant to comply with the federal [PSA].”³⁸ The problem with such prescriptive language is that it puts the Brand Board in the position of validating the business model and performing a financial analysis. Typically, neither the Brand Board members nor Division staff possess the skills necessary to perform such analyses.

The second statutory criterion that guides the sunset review process asks that analysis consider that when regulation is necessary, whether the laws establish the least restrictive form of regulation consistent with the public interest.

The Brand Board has determined that satisfying the surety provisions of the PSA is sufficient to satisfy the provisions of the Act. Therefore, the Act’s requirements that an applicant provide superfluous financial information concerning financial stability, business integrity, and fiduciary responsibility is overly burdensome. Consequently, the General Assembly should update license financial provisions to require surety in an amount that satisfies the PSA and repeal the remainder.

Recommendation 3 - Repeal the specific spatial requirements for licensure and authorize the Brand Board to determine if the facility is of adequate size and shape to house a public livestock market.

This Recommendation 3 is similar to Recommendation 2 in that it seeks to repeal overly restrictive, prescriptive requirements mandated by the Act to qualify for a license. Section 35-55-102(3), C.R.S., reads:

Before an application for a license is approved, the applicant shall prove ownership or control by lease of not less than six thousand square feet of holding pens including ample sorting and handling alleys, not less than 10 feet wide with at least three gates in each alley that will fasten across the alley; ample pens and sheds for holding and handling sheep and hogs; and

³⁷ § 35-55-102(1)(f), C.R.S.

³⁸ § 35-55-102(1)(e), C.R.S.

at least two adequate-sized pens with connecting alley and usable chute for use by state and federal livestock sanitary inspectors.

All public livestock markets have a common purpose; they are places to sell livestock. However, that is where the similarities end. The days of the operation, the number of animals sold, and the species of animals sold, are among the variables that may change from one operation to another. Prescribing the dimensions and type of facilities necessary to operate is highly prescriptive and may not fit the needs of the business or of regulators.

A better solution is to provide the regulator, the Brand Board, with the discretion to determine if the facilities are adequate to perform the inspections. These operations are businesses, if the needs of inspectors and consumers are not met concerning the holding, handling, sorting, and inspecting of the animals, then the livestock owners will find another place to consign their animals.

Therefore, the General Assembly should repeal the specific spatial requirements for licensure in the Act and authorize the Brand Board to determine if the facility is of adequate size and shape to house a public livestock market.

Recommendation 4 - Repeal the provisions of the Act that give the Brand Board authority over public livestock market sanitation.

There are several provisions in the Act that address the sanitary conditions of public livestock markets. Section 109 of the Act directs that all livestock markets must be, “maintained in a sanitary condition.” Keeping facilities sanitary is an important step in preventing the spread of disease. However, the second half of section 109 reads, “and cleaned and disinfected under the supervision of a veterinarian authorized by the [Brand Board] when necessary.” There are problems associated with this latter provision.

First, section 109 implies that the brand inspectors are charged with ensuring that public livestock markets are kept in a sanitary condition. The Brand Board licenses public livestock facilities. However, livestock disease control is, in a general sense, under the purview of the State Veterinarian and Article 50 of Title 35, C.R.S., and the U.S. Department of Agriculture (USDA). Brand inspectors exclusively inspect animals and verify identification. While a brand inspector may notice if a facility does not appear to be clean, the brand inspectors have no expertise to determine if unsanitary conditions exist.

Second, the Brand Board does not authorize veterinarians. Veterinarians are licensed by the State Board Veterinary Medicine and, if they choose, they can be accredited by the USDA. The purpose of the accreditation is to, “ensure the health of the nation’s livestock and animal population and to protect the public health and well-being.”³⁹ The on-site veterinarians who inspect livestock prior to sale may, or may not, be accredited

³⁹ USDA. *National Veterinary Accreditation Program*. Retrieved May 15, 2018, from <https://www.aphis.usda.gov/aphis/ourfocus/animalhealth/nvap>

by the USDA. Furthermore, the veterinarians are employed by the owner/operator of the public livestock market, not the Brand Board. Because the veterinarians are not employed by the Brand Board, it does not have the power to authorize these veterinarians to supervise the cleaning of public livestock markets.

There are additional issues in section 107(1)(d) of the Act. This section allows that a licensee may be disciplined for not following the sanitation measures required by rule or regulation promulgated under the Act. The Brand Board does not promulgate rules pertaining to sanitation. The Act's language should allow the Brand Board to take action for a violation of any federal, state, or local agency concerning sanitation of the facility but it should not specify rules or regulations adopted pursuant to the Act. If there is a need to discipline a facility for sanitation violations brought by other jurisdictions, the Brand Board needs to retain the authority to do so. However, that authority should not be founded on laws that the Brand Board does not execute.

Because the Brand Board does not have the expertise or general authority to implement the provisions of the Act concerning sanitation, the General Assembly should repeal the provisions of the Act that give the Brand Board authority over public livestock market sanitation.