



# **Dora**

Department of Regulatory Agencies

**Office of Policy, Research and Regulatory Reform**

# **2008 Sunset Review: Slaughter, Processing, and Sale of Meat Animals Act**

**October 15, 2008**





**Executive Director's Office**  
D. Rico Munn  
Executive Director

Bill Ritter, Jr.  
Governor

October 15, 2008

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 mission of the Department of Regulatory Agencies (DORA) is consumer protection. As a part of the Executive Director's Office within DORA, the Office of Policy, Research and Regulatory Reform seeks to fulfill its statutorily mandated responsibility to conduct sunset reviews with a focus on protecting the health, safety and welfare of all Coloradans.

DORA has completed the evaluation of the Colorado Slaughter, Processing, and Sale of Meat Animals Act. I am pleased to submit this written report, which will be the basis for my office's oral testimony before the 2009 legislative committee of reference. The report is submitted pursuant to section 24-34-104(8)(a), of the Colorado Revised Statutes (C.R.S.), which states in part:

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

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

The report discusses the question of whether there is a need for the regulation provided under Article 33 of Title 35, C.R.S. The report also discusses the effectiveness of the Colorado Department of Agriculture and staff in carrying out the intent of the statutes and makes recommendations for statutory changes in the event this regulatory program is continued by the General Assembly.

Sincerely,

D. Rico Munn  
Executive Director



Bill Ritter, Jr.  
Governor

D. Rico Munn  
Executive Director

## **2008 Sunset Review: Slaughter, Processing, and Sale of Meat Animals Act**

### **Summary**

#### ***What is Regulated?***

The slaughter, processing, and sale of animals intended for human consumption.

#### ***Why is it Regulated?***

The Colorado Department of Agriculture (CDA) inspects custom processing plants to ensure cleanliness and help protect consumers from contracting food-borne illness.

CDA regulates food plans to protect consumers from dishonest business practices.

#### ***Who is Regulated?***

In fiscal year 06-07, CDA licensed 129 custom processing facilities including: 55 slaughtering facilities, 43 wild game processors, 28 domestic livestock processors, and 3 mobile processors.

CDA also licensed 37 food plan firms during fiscal year 06-07.

#### ***How is it Regulated?***

The Field Programs section of CDA Inspection and Consumer Services Division (ICS) works in conjunction with the U.S. Department of Agriculture (USDA) Food Safety Inspection Service (FSIS) to license and inspect custom meat processing facilities to ensure facility sanitation and product safety.

Food plan regulation is based on business sales and advertising practices, it is managed as a part of the Technical Services section of ICS.

#### ***What Does it Cost?***

The fiscal year 07-08 budget expenditure to oversee the custom processing program was \$68,888 and was administered by 0.5 full-time equivalent (FTE) employees.

The food plan management budget was \$36,886 and was administered by 0.2 FTE.

#### ***What Disciplinary Activity is There?***

Between fiscal years 02-03 and 06-07, 31 percent of the inspections of custom processing licensees resulted in some form of major or critical violation. During that same time period, 57 percent of food plan inspections yielded a violation.

#### ***Where Do I Get the Full Report?***

The full sunset review can be found on the internet at: [www.dora.state.co.us/opr/oprpublications.htm](http://www.dora.state.co.us/opr/oprpublications.htm).

## Key Recommendations

### ***Continue the regulation of custom meat processors.***

The CDA inspects custom meat processing plants to protect consumers from the potential deadly affects of food-borne illness. Following the standards set by the U.S. Department of Agriculture – Food Safety and Inspection Service, the CDA inspects the physical facilities where food animals are processed exclusively for the owner of the meat and not for sale.

### ***Continue the regulation of food plans.***

CDA regulates food plans to protect consumers from fraud and other dishonest business practices. The regulation adds specificity concerning food plans that are not present in the Colorado Consumer Protection Act.

### ***Sever the Slaughter, Processing, and Sale of Meat Animals Act (Act) into Custom Processing and Food Plan Sales laws.***

Separating the Act into two separate statutes completes what CDA-Inspection and Consumer Services Division has already accomplished administratively. Currently the Act contains two disparate programs that have no regulatory functions in common. Statutorily separating the programs will bring clarity to the Colorado Revised Statutes and alleviate possible confusion.

## Major Contacts Made During This Review

Carnivore Club  
Colorado Association of Meat Processors  
Colorado Cattleman's Association  
Colorado Department of Agriculture  
Colorado Farm Bureau  
Colorado Horse Council  
Colorado Livestock Association  
Colorado Wool Growers Association  
Livestock Marketing Association  
Rocky Mountain Farmers Union  
United States Department of Agriculture

### **What is a Sunset Review?**

A sunset review is a periodic assessment of state boards, programs, and functions to determine whether or not they should be continued by the legislature. Sunset reviews focus on creating the least restrictive form of regulation consistent with 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  
Office of Policy, Research and Regulatory Reform  
1560 Broadway, Suite 1550, Denver, CO 80202  
[www.dora.state.co.us/opr](http://www.dora.state.co.us/opr)

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## Background

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### *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 Department of Regulatory Agencies (DORA) conducts a thorough evaluation of such programs based upon specific statutory criteria<sup>1</sup> 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;
- Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.

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

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## *Types of Regulation*

Regulation, when appropriate, can serve as a bulwark of consumer protection. Regulatory programs can be designed to impact individual professionals, businesses or both.

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.

Regulation, then, has many positive and potentially negative consequences.

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.



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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

As regulatory programs relate to businesses, they can enhance public protection, promote stability and preserve profitability. But they can also reduce competition and place administrative burdens on the regulated businesses.

Regulatory programs that address businesses can involve certain capital, bookkeeping and other recordkeeping requirements that are meant to ensure financial solvency and responsibility, as well as accountability. Initially, these requirements may serve as barriers to entry, thereby limiting competition. On an ongoing basis, the cost of complying with these requirements may lead to greater administrative costs for the regulated entity, which costs are ultimately passed on to consumers.

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Many programs that regulate businesses involve examinations and audits of finances and other records, which are intended to ensure that the relevant businesses continue to comply with these initial requirements. Although intended to enhance public protection, these measures, too, involve costs of compliance.

Similarly, many regulated businesses may be subject to physical inspections to ensure compliance with health and safety standards.

### ***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. To facilitate input from interested parties, anyone can submit input on any upcoming sunrise or sunset review via DORA's website at: [www.dora.state.co.us/pls/real/OPR\\_Review\\_Comments.Main](http://www.dora.state.co.us/pls/real/OPR_Review_Comments.Main).

The regulatory functions of the Colorado Department of Agriculture (CDA) relating to Article 33 of Title 35, Colorado Revised Statutes (C.R.S.), shall terminate on July 1, 2009, unless continued by the General Assembly. During the year prior to this date, it is the duty of DORA to conduct an analysis and evaluation of the Slaughter, Processing, and Sale of Meat Animals Act pursuant to section 24-34-104, C.R.S.

The purpose of this review is to determine whether the currently prescribed regulation of meat processing facilities, food locker plants, and food plans should be continued for the protection of the public and to evaluate the performance of the Inspection and Consumer Services Division (ICS) within CDA. During this review, ICS must demonstrate that the regulation serves to protect the public health, safety or welfare, and that the regulation is the least restrictive regulation consistent with protecting the public. DORA's findings and recommendations are submitted via this report to the legislative committee of reference of the Colorado General Assembly.

### ***Methodology***

As part of this review, DORA staff conducted a literature review, interviewed ICS administrative and field staff, reviewed ICS records including complaint and disciplinary actions, interviewed CDA Brand Inspection Division staff, interviewed officials with state and national associations, interviewed administrators with the U.S. Department of Agriculture, observed facility inspections, interviewed consumers and members of the regulated community, reviewed Colorado statutes and administrative rules, and reviewed United States laws and regulations.

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## *Profile of the Industry*

In the legislative declaration of the Slaughter, Processing, and Sale of Meat Animals Act (Act), the Colorado legislature states that regulation of facilities is necessary to protect the public's health and welfare and the state's economy.<sup>2</sup> While the Act does address issues such as storage, packaging, and both wholesale and retail sales of meat, it must be clear that the Act is not about regulating the small package of meat the average retail consumer will purchase at the neighborhood grocer. The Act addresses larger bulk quantities of meat and meat products either processed specifically for the owner or purchased from a home delivery firm.

The Act, and therefore this review, is broken into two disparate sections: Custom Slaughter and Processing, and Food Plans.

### Custom Slaughter and Processing

There is no definition of "slaughter" in the statute, but for the purposes of this review a working definition has been provided by the CDA: A process, including bleeding, that causes the death of any animal intended for food.

A custom slaughterer in Colorado is licensed by two different divisions within CDA, the Division of Brand Inspection and ICS. A custom slaughterer will slaughter, and usually process, a live animal that the owner either personally brings or has delivered to the slaughtering facility. The slaughterer must mark the meat "not for sale" before it is picked up by the owner for personal consumption. These facilities are referred to as "Custom Exempt Facilities," or just "Custom Facilities," because they are licensed by CDA, are exempt from U.S. Department of Agriculture (USDA) licensing, and because the meat is custom prepared specifically for consumption by the owner and not for sale.

Processing is what the lay person refers to as butchering. In the custom processing plant, the processor may not be the one who actually does the slaughtering. An animal carcass could be brought to the facility by the owner to be processed into various cuts and other products, such as sausage. In the case of game animals, hunters bring animals into the processing plant in various states of dress.<sup>3</sup> The processor will process the meat to the owners' custom specifications, to whatever extent possible considering the condition of the meat and the carcass.

There are also mobile processing facilities. Mobile processing facilities operate in two ways: some are facilities that will go to a temporary site with a facility such as a trailer, while others set up a temporary site in an existing building. Either way they are subject to the laws and inspections established for facility sanitation.

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<sup>2</sup> § 35-33-102, C.R.S.

<sup>3</sup> To cut up, trim, and remove the skin, feathers, viscera from an animal, meat, fowl, or flesh of a fowl, for market or for cooking

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## Food Plans

Food plans are amalgamations of food products or cuts of meat sold and purchased as a unit. According to ICS there are three basic types of food plans:

- Route sales: These types of food plans sell frozen prepared meals, meat cuts, ice cream, etc. The operator typically distributes product catalogues and delivers orders. This is a series of one-time sales and a non-contractual relationship.
- Door-to-door seller: This type of food plan sells a “six pack,” which is a box weighing about 20 pounds that contains six individual boxes of various meat cuts (such as T-Bones, hamburger patties, chicken breasts), usually by cold call. This type of business usually has a brochure with the prices on it, but generally will discount the listed price. The purchaser has the ability to examine the products before purchase. This is a one-time sale, non-contractual relationship.
- Food plan seller: This type of food plan utilizes telemarketing to set up in-home sales presentations, and sells a six-month supply of frozen foods and may also arrange the financing of the purchase. These operators require the customer to enter into a food service agreement for “wholesale” pricing. A typical food plan order weighs 125-150 pounds and consists of approximately 30 different frozen food items including; beef, pork, fish, chicken, vegetables, and other prepared foods items. The sales price for a food plan varies and is presented as a single price with no individual pricing for the food items. These operators sometimes offer bonuses and/or special pricing for other items to their customers/members.

## *History of Regulation*

Originally enacted as the Frozen Food Provisioner’s Law, the statute licensed food plan operators, locker plants, and processing operations concerning the cutting, wrapping, and packaging of meat and meat products intended to be stored in freezers at home or in storage facilities. Repealed and reenacted in 1989, the law took its current form and regulatory scope with the major emphasis being placed on processing facility sanitation and the advertising and sale of meat.

Acting on hunters’ complaints of unsanitary conditions and recommendations by the Colorado Division of Wildlife, the General Assembly expanded the definition of meat and meat products when it included large game animals.<sup>4</sup> This allows for inspection of processing plants that specialize in game and operate for short periods surrounding hunting season.

Following a recommendation made in the 1994 sunset review, the General Assembly amended the statute to include and define adulterated meat. The change delineated that it is a Class 2 misdemeanor to knowingly process or sell adulterated meat but it remains a Class 5 felony to knowingly process or sell diseased meat.

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<sup>4</sup> § 35-33-103(19), C.R.S.

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For most of its history the Act was administered using General Fund dollars and all slaughterers licensed under the Slaughterers Act were exempt from licensing under the Act, i.e., only processors who did not slaughter animals were licensed by ICS under the Act. However, ICS still inspected all custom exempt plants that performed both slaughtering and custom processing.

When ICS became cash-funded in fiscal year 03-04, it needed to be reimbursed for the service of inspecting the facilities that were given the Slaughterers Act exemption. The General Assembly required that a portion of the Slaughterers Act license fee be sent to ICS to cover inspection-related expenses.<sup>5</sup>

During the 2007 legislative session, the Slaughterer's Act licensing exemption to the Act was eliminated.<sup>6</sup> Since that time, a license to slaughter meat animals has been required by the Slaughterer's Act and the Act.

Significant change also occurred in the regulation of food plans. During fiscal year 07-08, ICS moved the regulation of food plans to the Technical Services section from the Field Programs section separating it from the meat processing program. ICS staff stated that it was misplaced where it had been administered, in a meat processing plant inspection program, when the regulation deals with administrative business practices rather than sanitary conditions

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<sup>5</sup> Senate Bill 03-297, Session Laws of Colorado, First Regular Session 2003, vol.2, p.1724.

<sup>6</sup> House Bill 07-1198, Session Laws of Colorado, First Regular Session 2007, vol.2, p.1909.

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## Legal Framework

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The United States Department of Agriculture's (USDA) Food Safety Inspection Service (FSIS) has the biggest role, based on quantity of meat processed, in processing facility inspection. Because the FSIS lays out a regulatory template for states to follow, the programmatic overlap between the state and national programs is quite extensive. Separation between two programs is based on the ownership of the animals and meat being processed. Federal inspections are completed in facilities, for sanitation, and of meat, to grade the quality. The animals are slaughtered and processed for someone other than the owner/consumer of the meat, i.e., an entity that has animals slaughtered and either sells or gives the meat away.

The Colorado Department of Agriculture (CDA) inspects only the facilities, not the meat, where "domestic livestock and wild game for the owner's consumption"<sup>7</sup> is processed and all processed meat is prominently labeled "Not For Sale." However, CDA, as a federal program subcontractor, sends a copy of its facility inspection report to the FSIS. State inspection standards are "at least equal to" those required in the Federal Meat Inspection Act as demanded by federal regulation.<sup>8</sup> Some processing facilities are licensed by both the federal and state programs. The FSIS inspects meat and facilities on days that meat is processed for sale and CDA is responsible for inspecting facilities on days that custom processing is done. The FSIS reimburses the state program for follow-up inspections, helping ensure facility standard compliance is verifiable. The FSIS also audits the state program to ensure the Colorado program maintains compliance with federal program standards.

There is not just programmatic overlap with federal programs, overlap exists within Colorado state government and CDA as well. Though the Division of Brand Inspection plays no regulatory role with regard to processing facilities and retail sales of meat, there are conditions in Article 11 of Title 12, Colorado Revised Statutes (C.R.S.), requiring slaughterers to be licensed by the Division of Brand Inspection and requiring that brand inspections are to be carried out on equine and bovine animals that are slaughtered in Colorado.

The set of provisions developed for food plan regulation within the Slaughter, Processing, and Sale of Meat Animals Act (Act) all concern business practices. The major topics address the agreement structure between consumer and operator, how products are to be packaged and labeled, and certain prohibitions in methods of advertising. There is regulatory overlap among the Act, the Consumer Protection Act,<sup>9</sup> and the Measurements Standards Act<sup>10</sup> concerning the methods of sale, labeling, and packaging of products. The major difference being, that the Act has specific provisions pertaining to food plans rather than the general provisions in the other laws.

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<sup>7</sup> Colorado Department of Agriculture, *Meat Inspection Information*, retrieved January 18, 2008, from <http://www.colorado.gov/cs/Satellite?c=Page&childpagename=Agriculture-Main%2FCDAGLayout&cid=1167928392573&p=1167928392573&pagename=CDAGWrapper&rendermode=preview>

<sup>8</sup> US Department of Agriculture-Food Safety and Inspection Service, *FSIS Manual for State Meat and Poultry Inspection Program Reviews*, (2007) p3.

<sup>9</sup> § 6-1-105, C.R.S.

<sup>10</sup> §§ 35-14-110, 35-14-113, 35-14-118, 35-14-120 C.R.S.

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## Colorado Statute Summary

The Colorado legislature has found that the regulation of the slaughter, processing, and sale of meat animals is necessary to protect public's health and welfare and the state's economy.<sup>11</sup>

### License Procedures and Conditions

The CDA and the Commissioner of Agriculture (Commissioner) are responsible for creating rules and standards regarding the construction, operation, and sanitation of meat slaughter, storage, and processing facilities, package materials, as well as the packaging, preparing, and sales of meat products.<sup>12</sup> Any person who operates a food plan,<sup>13</sup> locker plant,<sup>14</sup> or a meat processing facility must hold a valid license to operate.<sup>15</sup>

A license is issued upon approval of an application, facility inspection and approval, and in the case of food plans, demonstration of financial responsibility or surety bond in an amount determined by the Commissioner up to \$50,000.<sup>16</sup> The fee for the license is also determined by the Commissioner. Every license in good standing, regardless of when it is issued, is renewed the next June 30 and on that date each succeeding year.<sup>17</sup>

The Commissioner may deny, suspend, revoke, restrict, or refuse to renew the license of a person who falsifies the license application, has had action taken against a previous license, fails to comply with the Act, or its associated rules, or allows the license to lapse without renewed financial surety.<sup>18</sup>

### Facilities

To ensure that meat processing activities occur both safely and cleanly, regulations delineate specifications regarding: acceptable employee conduct during processing, facility sanitation, slaughter methods, animal and carcass storage, and the handling, labeling, and general disposition of both edible and non-edible meat.<sup>19</sup> Detailed records concerning financial transactions and the number and species of animals processed must be kept and made available to the Commissioner on demand.<sup>20</sup>

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<sup>11</sup> § 35-33-102, C.R.S.

<sup>12</sup> § 35-33-104(1), C.R.S.

<sup>13</sup> § 35-33-103(10), C.R.S.

<sup>14</sup> § 35-33-103(18), C.R.S.

<sup>15</sup> § 35-33-401, C.R.S.

<sup>16</sup> § 35-33-403, C.R.S.

<sup>17</sup> § 35-33-402, C.R.S.

<sup>18</sup> § 35-33-404, C.R.S.

<sup>19</sup> § 35-33-201, C.R.S.

<sup>20</sup> § 35-33-202, C.R.S.

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## Advertising and Sales

The advertising and sales stipulations of the Act apply to the marketing and sales transactions of bulk product food plans. Bulk products weigh more than 20 pounds and are cut and wrapped for cold storage.<sup>21</sup>

The provisions protect the consumer in several ways. There are specific prohibitions to prevent deceptive and fraudulent advertising relating to nutrition, packaging, measurement, and organizational structure of food plans.<sup>22</sup> Sales contracts must be structured with standardized language to ensure that consumers are aware of what they are buying.<sup>23</sup> There are also specific demands concerning disclosures of warranties, conditions, and other contractual terms.<sup>24</sup>

## Enforcement

The CDA has the right to inspect any facility at any reasonable time during regular business hours. If the Commissioner believes the health and welfare of the public is in jeopardy, he or she may issue a cease and desist order, a retention order for any questionable products, or order product disposal when warranted.<sup>25</sup>

The Commissioner may also seek an injunction to cease operations if all administrative remedies have been exhausted or when immediate action is deemed necessary.<sup>26</sup> In addition to any criminal penalties, violation of any part of statute or associated rule is a misdemeanor, there is also provision for civil penalties for a violation of any part of the statute. The Commissioner has fining authority up to \$750 per day per violation at his or her discretion. However, any fine issued is subject to judicial review.<sup>27</sup>

## Exemptions

The Act contains exemptions to reinforce the situations when it is applicable, to define the relationship between federal and state law, and to make allowance for cultural and religious practices. Any grocery store that does not get more than 25 percent of its business from bulk meat is exempt from only the above CDA licensing requirements, not the advertising and sales requirements.<sup>28</sup> If a person has a USDA inspection number and does not sell retail or custom process meat animals, he or she must only comply with the section of the Act regarding the “sale of adulterated or diseased meat.” That section lays out criminal penalties for receiving adulterated meat expected to be made available for human consumption.<sup>29</sup> Religious ritual slaughter, handling, or preparation is exempt from the “slaughter methods” section of the Act which requires conformance to the federal Humane Methods of Slaughter Act of 1958.<sup>30</sup>

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<sup>21</sup> § 35-33-301(a)(b) , C.R.S

<sup>22</sup> § 35-33-302, C.R.S.

<sup>23</sup> § 35-33-303, C.R.S

<sup>24</sup> § 35-33-304, C.R.S.

<sup>25</sup> § 35-33-104, C.R.S

<sup>26</sup> § 35-33-105, C.R.S

<sup>27</sup> § 35-33-405, C.R.S

<sup>28</sup> § 35-33-107(2), C.R.S

<sup>29</sup> § 35-33-107(3), C.R.S

<sup>30</sup> § 35-33-107(4), C.R.S



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## Rules and Regulations

The rules and regulations developed by ICS to put into operation the meat inspection program mirror those developed by the FSIS. The federal government demands that, at minimum, state facility inspection programs have standards to match FSIS's for the federal Meat Inspection Act implementation.<sup>31</sup> The rules are very detailed in what is expected by the regulators during plant inspections concerning facility appearance, construction, operating systems, and sanitation.

Food plan rules and regulations restate the advertising and sale section of the statute geared to protecting the consumer from fraud by disclosing every part of the transaction to the consumer.

Any food plan advertisement must include, in a clear and conspicuous manner, information pertaining to any service charges or other additional costs associated with a purchase. There is also a general prohibition on making false or misleading statements.<sup>32</sup>

Contracts for food plans must define who the principals are in a sales transaction and outline details of the contract between the principals outside of what the average consumer might consider customary to a contractual relationship, including:<sup>33</sup>

- A separate itemized list and price for both food and nonfood items<sup>34</sup> included in the plan.
- Service charges<sup>35</sup> and a written statement specifically identifying the service(s) provided.
- Total price itemized for cutting, freezing, wrapping, packaging, delivering, freezer or locker rental, insurance, and any membership or finance charge.
- An itemized list of products including identity, weight, USDA grade, the primal source,<sup>36</sup> the brand or trade name, and estimated serving size, by net weight of each piece of meat, not to differ from the delivery weight by more than five percent.
- The make, model number, and size of any storage appliance rented or sold.
- In the case that a membership is sold, a written statement of all applicable terms, conditions, benefits, and privileges.
- A three day right of cancellation by the purchaser written in bold type, minimum 10-point font, in the same language as the contract, and attached to the contract or receipt.

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<sup>31</sup> US Department of Agriculture-Food Safety and Inspection Service, *FSIS Manual for State Meat and Poultry Inspection Program Reviews*, (2007) p3.

<sup>32</sup> Colorado Department of Agriculture, Rules and Regulations Pertaining to the Administration and Enforcement of the Slaughter, Processing, and Sale of Meat Animals Act Method of Sale of Food Plans, Part 3

<sup>33</sup> *Ibid.*, Part 2.

<sup>34</sup> Nonfood items are inedible products such as paper products, health and beauty products, detergents, etcetera. However durable consumer goods such as appliances are not considered nonfood items. *Ibid.* 1.05.

<sup>35</sup> A service charge is the total price for any additional features, services, and processing associated with the food plan, whether stated in terms of fee or otherwise. *Ibid.* 1.06.

<sup>36</sup> Primal Source is the cut of meat based on species. i.e., beef, lamb, or pork. *Ibid.* 1.07.

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## Program Description and Administration

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The Colorado Department of Agriculture (CDA) Inspection and Consumer Services Division (ICS) administration divided its management of the Slaughter, Processing, and Sale of Meat Animals Act (Act) into two separate focus areas as of fiscal year 07-08. The first area is made up of livestock processing facilities, game processing facilities, and mobile processing facilities, where sanitation inspections of meat processing facilities are managed under the ICS-Field Programs section. This focus area is referred to as “Custom Slaughter and Processing” throughout this report. The second focus area, “Food Plan” sales, is managed under the direction of the ICS-Technical Services section. See Appendix A on page 31 for an ICS organizational flow chart.

Before fiscal year 02-03, activities were funded with General Fund dollars but the program has been cash-funded since. Table 1 includes fiscal and workforce information through fiscal year 07-08, when the custom processing and the food plan programs were separated administratively. The custom slaughter and processing administration continues to use 0.5 full-time equivalent (FTE) employees as it did prior to the administrative separation. However, the total expenditures for the combined functions have dropped four percent since the separation even with the slight increase in labor.

**Table 1  
Fiscal Information**

Fiscal Year	Total Program Expenditures	FTE
02-03	Unknown*	0.5
03-04	\$92,236.00	0.5
04-05	\$103,339.00	0.5
05-06	\$109,124.00	0.5
06-07	\$110,188.00	0.5
07-08**	\$68,888.00 / \$36,886.00	0.5 / 0.2
*Program not tracked under General Fund		
**Custom Slaughter & Processing / Food Plan Program		

### Custom Slaughter & Processing

The directive for enforcement of the processing component of the Act is assuring sanitation of custom slaughtering and processing facilities, which is carried out by the ICS-Field Program inspectors. According to detailed regulations related to the Act, the makeup of a structure, materials, facility surface finishes, and cleaning methods are all prescribed to ensure that standards of cleanliness are met. The standards mirror those established by the U.S. Department of Agriculture’s (USDA) Federal Safety Inspection Service (FSIS) regulations.

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The example below illustrates the level of detail included in the ICS program regulations that a plant operator must follow. It prescribes water temperature, cleaning solutions makeup, and procedures demanded to sanitize a facility and be program compliant.

Example:

1.07. The terms "sanitize" and "sanitized" mean to treat a clean surface with any of the following methods or substances: (1) water at 180° F; (2) a chlorine and water solution of: (i) 100 parts of chlorine per million of water when applied by sponge or cloth; (ii) 200 parts of chlorine per million of water when applied directly by spray; or (iii) 50 parts of chlorine per million of water when used to soak the item in a container for at least one minute; or (3) any substance intended to be used to sanitize equipment and/or utensils in a processing facility and labeled as approved by the United States Department of Agriculture.<sup>37</sup>

Rules that are very specific, such as the above example, make procedures and expectations clear to each licensee. Operators know what is expected to obtain and maintain a facility license without incident.

### Food Plans

The administration of food plans is performed by the Technical Services section of ICS. Management of this component of the Act was moved out of the meat program based on the belief that the only similarity connecting the meat program and food plans are that some food plans sell meat. Food plan regulation is more a function of measurements and standards than sanitation and the client base is completely different. The move acknowledges the regulatory/enforcement similarities between this section of the Act and portions of the Measurement Standards Act and offered an opportunity for regulatory efficiency.

The rules promulgated to regulate food plans under the Act concern business practices, contract language, product labeling, and plan advertising as opposed to facility construction and cleanliness for the meat processing plants.<sup>38</sup> However, unlike the meat program, while there is overlap with other state regulation, there is no federal layer superseding the regulation of food plan sales. Consequently, there is no regulatory template to follow and there is no other authority to collaborate with or answer to. Rules and regulations and program management are all based on the experiences and observations of CDA regulators.

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<sup>37</sup> Colorado Department of Agriculture, *Rules and Regulations Pertaining to the Administration and Enforcement of the Slaughter, Processing, and Sale of Meat Animals Act*.

<sup>38</sup> Colorado Department of Agriculture, *Rules and Regulations Pertaining to the Administration and Enforcement of the Slaughter, Processing and Sale of Meat Animals Act Method of Sale of Food Plans*.

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## Licensing

### Custom Slaughter and Processing

Based on ICS data, during fiscal year 06-07, 71 licensed processing facilities in Colorado carried out custom meat processing for meat owners and the FSIS program licensed 18 non-custom facilities. Fifty-five of the custom plants and three mobile slaughterers were also licensed as slaughterers with the Division of Brand Inspection. Slaughterers who work at processing facilities that slaughter (not all processing plants slaughter animals) must also obtain a license issued by the Division of Brand Inspection. The purpose of the license is to assist the Division of Brand Inspection of CDA in tracking brands of all equine and bovine animals slaughtered at both custom and USDA-licensed facilities to prevent illegal butchering.<sup>39</sup> Prior to fiscal year 03-04, ICS did not keep track of the number of firms licensed by both the Division of Brand Inspection and ICS.

Table 2 reveals the different categories of license issued to processing facilities and the number of facilities licensed in each category during the study period. Fiscal year 03-04 was the first year a separate license for wild game processors was needed and fiscal year 06-07 was the first year that mobile facilities were listed as a category.

**Table 2**  
**Custom Slaughter and Processing Facilities**

Fiscal Year	Wild Game only Processors	Mobile (Brands & ICS)	Domestic Livestock Processor	Multiple Fees (Brands & ICS)
02-03	N/A	N/A	50	N/A
03-04	37	N/A	21	45
04-05	40	N/A	29	22
05-06	44	N/A	33	67
06-07	43	3	28	55

Though the data does not appear in the table above, it is important to note that prior to fiscal year 07-08, slaughterers licensed under the Slaughterers Act were exempt from licensing under the Act but an ICS facility inspection fee was collected. At that time the General Assembly eliminated the exemption<sup>40</sup> and currently, a license is required under both laws.

Below, Table 3 contains information regarding the licensing fees from the fiscal years 06-07 and 07-08. The licensing fee reduction is to keep the program in line with its fee-based, cash-funded designation.

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<sup>39</sup> Colorado Department of Agriculture-Brand Inspection Board, retrieved February 22, 2008, from <http://www.colorado.gov/cs/Satellite?c=Page&childpagename=Agriculture-Main%2FCDAGLayout&cid=1167928197096&p=1167928197096&pagename=CDAGWrapper>.

<sup>40</sup> House Bill 07-1198, Session Laws of Colorado, First Regular Session 2007, vol.2, p.1909.

**Table 3  
Custom Slaughter & Processing License Fees**

Type	FY 06-07 Fee	FY 07-08 Fee
Domestic Processors w/ USDA license	\$300	\$100
Domestic Custom Processors	\$550	\$350
Wild Game Only Processors	\$250	\$200
Mobile Processors	\$250	\$200

The time to obtain a license to operate a processing facility depends upon the point at which the applicant is in making the facility business-ready. All facilities must be inspected prior to licensing.<sup>41</sup> If a facility is ready, it can be inspected and licensed within 30 days. License renewals typically take no longer than two weeks.

**Food Plans**

To obtain a license, a business must have financial surety up to \$50,000, the precise amount is determined by the Commissioner of Agriculture (Commissioner), complete a license application form, and meet regulatory demands regarding sales materials. Once these steps are complete, a license will be issued within two weeks. To renew a license, an operator must submit an application and pay the yearly fee before the current license expires.

Prior to fiscal year 02-03, only one location of a food plan firm was required to be licensed. Table 4 delineates the number of licenses issued by CDA from fiscal year 02-03 through 06-07. Though not noted in the chart, an ICS licensing policy change occurred during fiscal year 07-08. Each business location and salesperson was required to be licensed.

**Table 4  
Food Plan Licenses**

Fiscal Year	Food Plan Firms
02-03	19
03-04	40
04-05	39
05-06	28
06-07	39

The food plan licensing system changed again in fiscal year 08-09. Once again only the primary firm location needs to be licensed; however, the current license fee is based on the number of sales personnel employed. Sales staff no longer will need a separate license. Table 5 indicates the licensing fee change.

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<sup>41</sup> § 35-33-402(1), C.R.S.

**Table 5  
Food Plan Fees**

Type of Fee Collected	FY 06-07	FY 07-08
Food Plan Licenses	\$275	N/A
Salesperson (each)	\$220	\$0
Sole Operator	N/A	\$350
Operators (2-5 Sales Reps)	N/A	\$750
Operators (6-10 Sales Reps)	N/A	\$1,250
Operators (11-15 Sales Reps)	N/A	\$1,500
Operators (16-20 Sales Reps)	N/A	\$2,000
Operators (21 + Sales Reps)	N/A	\$3,500
N/A = Not Applicable		

Though CDA acknowledges that there are basically three different types of businesses included under the food plan umbrella, route sales, door-to-door, and food plan sellers, licensing does not distinguish one type from another.

### *Inspections*

#### Custom Slaughter and Processing

The inspectors who inspect Colorado's processing plants are part of the ICS-Multiple Inspection Program. Each inspector has the use of a state vehicle, cell phone, laptop computer, and portable printer to help perform their duties. Inspections are recorded immediately on the computer and paperwork is generated instantly for a facility operator. Inspectors examine a wide range of systems and products from eggs to storage tanks. During processing facility inspections, inspectors examine specific items and systems, as required by the USDA-FSIS, and evaluate those as either acceptable or unacceptable. These include:<sup>42</sup>

- Recordkeeping and Documentation;
- Sanitation Operations;
- Pest Control;
- Inedible Material;
- Marking & Labeling Control;
- Pathogen Control;
- Water Supply; and
- Sewage & Waste Disposal.

<sup>42</sup> U.S. Department of Agriculture-Food Safety and Inspection Service, Exempt Establishment Review Report (for meat and poultry operations), January 22, 2008.

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The following Example 1 of an “Establishment Review Finding,” an inspection report, illustrates the thoroughness of a typical plant inspection. These were the total issues found at a custom processing plant inspection in Greeley, Colorado, on January 22, 2008, during a comprehensive inspection that lasted nearly two hours.

Example 1:

Establishment Review Finding:

*There was a knife scabbard with a knife with blood stains on it in the kill floor. The band saw had an area of about ½” square with meat and fat scrap on the housing. There was also some scrap on the lower blade guard. There was some (about ¼”) scrap in a grinder, on a seal*

The comprehensive inspection uncovered only a dirty knife and a small piece of scrap on a band-saw motor cover.

The purpose of the inspection is to ensure that the processing facility is in compliance, thus ensuring a sanitary environment. The inspectors do not want to overburden the operators, but the inspector is there to protect the public. Still, severe penalties, outlined in the statute summary, are available for severe violations as determined by the Federal Risk Values (FRV) system.

The system is based on the degree of health violation, *FRV 1 – Critical, FRV 2 – Major, FRV 3 - Minor, FRV 4 - No Violation* and is applied by the inspector.

**Federal Risk Values:**<sup>43</sup>

- FRV 1: At least one critical violation found (Usually on a surface directly in contact with meat).
  - A critical violation is a serious sanitary condition which would certainly cause meat to be adulterated or contaminated by contact with the equipment/surface, i.e., processing tables, knives, saws, tubs, grinders, & other direct contact surfaces.
  - CDA issues a Cease & Desist Order for FRV 1. Plant must properly clean and sanitize before processing may resume.
  - A follow up, or corrective, inspection is performed within five business days.
  - Four quarterly inspections will be performed during the next year.

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<sup>43</sup> ICS Memo Re: Meat Processor Program; explanation of risk assessment and inspection frequency. January 31,2008

- FRV 2: At least one major violation found, but less severe than a critical violation (Usually on a surface directly in contact with meat).
  - A major violation is a serious sanitary condition which would likely cause meat to be adulterated or contaminated by contact with the equipment/surface inspected, i.e., processing tables, knives, saws, tubs, grinders, and other direct contact surfaces.
  - Four quarterly inspections will be performed during the next year.
- FRV 3: Only minor violation(s) found (Usually on a surface not directly in contact with meat).
  - A minor violation is normally a minor condition which has the potential to cause adulteration if meat came in contact with the equipment/surface inspected, i.e., floors, walls, ceilings, rest rooms, record-keeping, etcetera, a paperwork problem, or record keeping problem.
  - Two semi-annual inspections will be performed during the next year.
- FRV 4: No violations found.
  - One annual inspection will be performed during the next year.

In the cases that a FRV 1 or 2 is cited, a cycle of quarterly follow-up inspections begins when the facility must have only minor or no violations, FRV 3 or 4. If a major or critical violation, FRV 1 or 2, is cited during the cycle, the quarterly inspection cycle will begin again from that point in time. If a facility repeatedly has FRV 1 or 2, then CDA will consider revoking its license.

Wild game only processing plants have a different inspection grading system since they usually operate only seasonally. They are given either a “P,” for passing an inspection, or an “F,” for failing an inspection. In the case of a major violation, there would be no point inspecting the facility quarterly if it is not open for one or two of the quarters. ICS has a policy that it will return to a failing facility until the facility passes and a facility needs to end the season with a “P” grade.

Complaint-based inspections are not the norm for processing facilities. As Table 6 illustrates, over the review period, of all facility inspections made, less than one percent were prompted by an incoming complaint while most were performed as routine investigations.

**Table 6  
Custom Slaughter & Processing Plant Inspections & Impetus**

<b>Fiscal Year</b>	<b>Number of Inspections</b>	<b>Routine/Complaint-Based</b>
02-03	171	170 / 1
03-04	173	170 / 3
04-05	199	199 / 0
05-06	220	216 / 4
06-07	208	207 / 1
Total	971	962 / 9



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## Food Plans

Like the meat program, the food plan program complaints do not often prompt inspections. The majority are routine in nature and only three percent of all inspections from fiscal year 02-03 through fiscal year 06-07 originated from a complaint.

**Table 7**  
**Food Plan Inspections & Impetus**

<b>Fiscal Year</b>	<b>Number of Inspections</b>	<b>Routine/Complaint-Based</b>
02-03	27	27 / 0
03-04	38	37 / 1
04-05	21	21 / 0
05-06	14	12 / 2
06-07	36	35 / 1
Total	136	132 / 4

## *Disciplinary Actions*

### Custom Slaughter and Processing

At first glance, the number of disciplinary actions taken compared to the number of inspections made appears fairly high. Examination of the table below shows that during the review period, approximately 31 percent of all the facility inspections resulted in some disciplinary action. Of the disciplinary actions taken, nearly 76 percent were classified either as major or critical violations. However, these numbers also indicate that the goal of getting failing facilities into compliance is achieved because the approximately 69 percent of the total inspections ended with a FRV 3 or 4, indicating that violators usually come into compliance before the subsequent inspections are made.

**Table 8**  
**Custom Slaughter and Processing Plant Inspections,  
FRV Severity and Frequency**

<b>Type of Action</b>	<b>FY 02-03</b>	<b>FY 03-04</b>	<b>FY 04-05</b>	<b>FY 05-06</b>	<b>FY 06-07</b>
Number of Inspections	171	173	199	220	208
FRV-1, Critical-Suspension Cease & Desist Order	19	8	13	20	9
FRV-2, Major-Probation / Practice Limitation	31	29	47	66	58
Letter of Admonition	1	2	1	1	0
Violation Inspection Ratio	30%	23%	31%	40%	32%

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## Food Plans

The regulation and inspection of food plans involves administrative and consumer issues opposed to health-oriented issues. A consumer may complain that he or she is not getting what was advertised by the company or salesperson or there may not be adequate or correct disclosure by the food plan operator in its contracts. Of 77 agency actions taken on food plan operators from fiscal years 02-03 through fiscal year 06-07, seven rose to the level of a license suspension.

Because the regulation of food plans relates to business practices, the violations are administrative rather than science- or health-based. Of all the investigations performed by ICS during the review period, 51 percent revealed a violation. The actions listed in Table 9 are mostly minor paperwork violations that did not result in action against a license. However, there were seven licenses suspended for fraudulent business practices.

**Table 9**  
**Food Plan Inspection and Actions**

<b>Type of Action</b>	<b>FY 02-03</b>	<b>FY 03-04</b>	<b>FY 04-05</b>	<b>FY 05-06</b>	<b>FY 06-07</b>
Number of Inspections	27	38	21	14	36
Revocation	0	0	0	0	0
Surrender of License	0	0	0	0	0
Suspension (including Cease & Desist)	0	2	0	5	0
Probation / Practice Limitation	0	0	0	0	0
Letter of Admonition	0	0	0	0	0
License Granted with Probation / Practice Limitations	0	0	0	0	0
License Denied	0	0	0	0	0
Injunction	0	0	0	0	0
Administrative Violation Citations	20	20	2	0	28

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## Fines

Prior to the 06-07 fiscal year, the custom processing and food plan programs were not managed separately, so the recording and tracking of fines was combined. The difference between the number of violations, noted in Tables 8 and 9 above, and any action taken, tables 9 and 10, is those instances when the oversight agency is helping the business come into compliance with regulation rather than issuing a fine. The two fines noted for fiscal year 06-07 were issued to food plan businesses. In that year, of 95 disciplinary actions taken, 28 food plan and 67 processing, only two were considered finable by CDA. Again, the ratio of fines to violations illustrates CDA's emphasis on compliance rather than a command-and-control regulatory mindset.

**Table 10**  
**Number and Value of Fines,**  
**Combined Custom Processing and Food Plans**

<b>Fiscal Year</b>	<b>Number of Fines Imposed</b>	<b>Total Value of Fines Imposed</b>
02-03	8	\$1,625
03-04	1	\$100
04-05	3	\$575
05-06	3	\$800
06-07	2	\$2,267

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## Analysis and Recommendations

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*Recommendation 1 – Continue licensing Custom Meat Processors and Food Plan Operators for nine years, until 2018.*

### Custom Slaughter & Processing

The first analysis criterion used during a sunset review concerns protection of the public's health, safety, and welfare. Currently, the public is bombarded with food contamination warnings, food recalls, and a plethora of Latin named maladies, such as Salmonella, Botulism, and Escherichia Coli, that elicit both strong and fickle reactions to the quality, and type of food in the food supply. It is necessary to make sure that programs are in force which protect the consumer whenever possible.

Food poisoning is caused by the ingestion of bacteria or virus tainted food. Its effects range from the uncomfortable: nausea, diarrhea, and cramping, to the catastrophic: nervous system damage and death.<sup>44</sup> Processing facility inspection is an important step in the course of insuring wholesome meat for the consumer and prevention of meat-related illness.

Though the Colorado livestock industry's economic contribution has been on a slight downward trend over the last two years<sup>45</sup> livestock products still contribute nearly \$4 billion yearly to the Colorado economy amounting to approximately 74 percent of the total state agricultural output. Of the nearly 4 million non-poultry animals in the state, 2.7 million, or 70 percent, of the inventory, as of January 1, 2007, was either cattle or calves. Colorado ranks high nationally in the number of cattle and calves (10<sup>th</sup>), lamb crop (9<sup>th</sup>), and the sheep and lambs, fed cattle marketings, and cattle on feed categories which all rank fourth among the 50 states.<sup>46</sup>

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<sup>44</sup>USA Today, *Health Encyclopedia- Disease and Conditions*, Food Poisoning, retrieved April 10, 2008, from <http://www.healthscout.com/ency/68/676/main.html?wwparam=1207850216#DefinitionofFoodPoisoning>

<sup>45</sup> *Colorado Economy To Grow Slightly In 2008 CU-Boulder Forecast Predicts*, <http://www.colorado.edu/news/releases/2007/480.html> Downloaded January 23, 2008 1:00PM

<sup>46</sup> U.S. Department of Agriculture and Colorado Department of Agriculture, *Colorado Agriculture; A Profile*. March 2007.

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Colorado's hunting industry contributes another \$464 million annually and more than 9,000 jobs to the state's economy.<sup>47</sup> Colorado ranks second nationally in the number of out of state hunters coming into the state to hunt with 134,000 hunter visits, while another 126,000 Coloradans stay and hunt in the state as well.<sup>48</sup> The Colorado Division of Wildlife found that during 2006, these 260,000 hunters bagged close to 110,000 animals including 56,933 elk, 44,784 deer, and 7,300 pronghorn.<sup>49</sup>

Combined, the livestock and hunting industries contribute almost \$4.5 billion dollars to Colorado's economy annually. Though processing facility sanitation may not have a direct effect on the state's agriculture and tourism industries, it certainly does have an effect. Consumer perception and consumer confidence are key ingredients in Colorado's ability to promote its products and services to intrastate, interstate, and international markets.

The facility inspection system under review appears to achieve its goal of bringing the custom meat processors into compliance and protecting consumers. Unlike when a consumer purchases U.S. Department of Agriculture (USDA) inspected meat from a butcher, a consumer brings an animal, or carcass, to a custom slaughter and processing facility hoping that the conditions are sanitary. Since there is no federal grading of the meat, performing unannounced, routine inspections and unannounced follow-up inspections, when necessary, the Colorado Department of Agriculture (CDA) adds a needed layer of consumer protection against disease and food contamination.

The continued licensing and inspection of custom slaughter and processing facilities is necessary to protect the public from both physical and economic harm. The specificity in the rules and inspection procedures, the authoritative design in the risk assessment criteria, the inclination to educate business owners about best operating practices, and the ability to discipline a business when those practices are not met are important to a regulating authority and ultimately protect the consumer.

## Food Plans

Protecting consumers from fraud and deception is one of the major justifications for government regulation. The disclosure stipulations in the Slaughter, Processing and Sale of Meat Animals Act (Act) are designed for this type of protection and a reasonable approach in most cases. Licensing food plan sales gives the state the regulatory ability to monitor the industry's practices generally and the individual operators specifically. Changes to the licensing program that make the business licensee responsible for the conduct of all employees, adds another layer of accountability.

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<sup>47</sup> National Shooting Sports Foundation, *Hunting and Fishing: Bright Stars Of The American Economy*, retrieved June 19, 2008, from <http://www.nssf.org/07report/compare.cfm>

<sup>48</sup> Congressional Sportsmen's Foundation and National Assembly of Sportsmen's Caucuses, *Colorado Sportsman*, retrieved June 19, 2008, from <http://www.nssf.org/07report/factsheets/Colorado.pdf?CFID=7621933&CFTOKEN=63677038&jsessionid=bc303062191202746835466>

<sup>49</sup> Colorado Division of Wildlife, Colorado Division of Wildlife 2006 Annual Report. p2.

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CDA writes few violations compared the number of food plan inspections made. A low violation/inspection ratio indicates that practitioners are generally in compliance. Compliance, in turn, indicates that consumers are generally protected.

The custom processing program provides consumers direct protection from food-borne illness. It also indirectly protects the livestock and game hunting industries. The food plan program protects consumers from fraud and other bad business practices. Therefore, the General Assembly should continue these programs.

***Recommendation 2 – Sunset the regulation of locker plants.***

A locker plant is a refrigerated storage unit rented by a consumer to store bulk quantities of food. Today locker plants are rare because people who purchase bulk meat usually have a home freezer to store their frozen foods or store the meat at the processing plant. Due to this major change in marketplace conditions there is no need for locker plant regulation and the unnecessary provisions should be stricken from the statute.

***Recommendation 3 - Sever the Slaughter, Processing and Sale of Meat Animals Act into Custom Processing and Food Plan Sales laws.***

Severing the Act into two separate statutes completes what CDA-Inspection and Consumer Services Division (ICS) has already accomplished administratively. The above narrative demonstrated both explicitly and implicitly that the programs are indeed separate. Explicitly by accounting the separation of administration, enforcement, and finances between the two programs, implicitly by organizing each section of this review into two parts, meat program and food plan program, to make the program(s) understandable.

The major difference between the two parts is regulatory organization. The custom processing program is facilities-based and carries out the hygienic standards established by the USDA-FSIS program. It is administered through the Field Programs section of ICS. The enforcement demeanor for the custom processing program is that the best way to protect consumers is to inspect often enough to keep the facilities in compliance and prevent food from becoming contaminated.

The food plan program is person- and service-based; it oversees business sales and contractual relationships, and it falls under the umbrella of the Colorado Consumer Protection Act and the Measurement and Standards Act rather than federal law. The Technical Services section of ICS, the section that regulates weights and measures and product sales, administers the food plan program. The character of program enforcement has a business orientation with the goal of preventing consumers from being defrauded rather than a science orientation with the goal of preventing physical illness.

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Having the two sections in one law is confusing. It is very difficult to immediately discern which sections apply to which program. Well organized laws benefit both consumers and the regulated community. Separating the two programs in statute, giving each its own definition and enforcement sections, will make clear which sections apply specifically to the custom processing program and which apply to the food plan sales program. Currently, all readers must wade through a myriad of inapplicable, cumbersome sections before it becomes obvious which does apply.

The following Recommendations 4 through 14, are proposed changes based on the current Act and its administration and implementation.

***Recommendation 4 - Explicitly define custom processing and indicate that the statute applies only to those facilities that perform custom processing.***

The USDA regulates all slaughter and processing facilities that process meat for sale. The CDA program applies only to those facilities that custom process meat for the owner of the animal or carcass and not for sale.

The statute does not state that it only applies specifically to custom slaughter and processing facilities. This is very confusing to a person who reads the statute and does not know about the multiple layers of regulation and the jurisdictions that have enforcement power. No custom processed meat is USDA inspected. Consequently, it is not allowed to be sold. Statute should reflect that all meat not inspected by the USDA be marked with owner's name and "Not For Sale."

The statute should require that all meat processed by at a custom facility be returned to its owner or disposed of. However, it is necessary to add exception for game animals. Disposal of game is regulated by the Colorado Division of Wildlife.

Making these changes to statute will eliminate potential confusion over which businesses are required to have a license and what jurisdiction has authority.

***Recommendation 5 - Define the terms "slaughter" and "processing."***

The Act's title is the Slaughter, Processing, and Sale of Meat Animals Act, but nowhere in the Act are the terms "slaughter" and "processing" defined.

For the purposes of this sunset review, ICS provided working definitions:

Slaughter - A process, including bleeding, that causes the death of any animal intended for food. This definition should be amended into the statute.

Processing – The slaughtering, dressing, cutting, preparing, trimming, wrapping, or packaging of meat or meat products.

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It is important that the interested public is aware of what constitutes a regulated process. Having specific definitions in statute is consumer protection at its most basic level. Precise definitions help protect consumers from arbitrary legal interpretations and unpredictable enforcement actions.

***Recommendation 6 – Update Food Plan regulation to reflect actual business structures and practices.***

There are three basic types of food plans:

- Routes sales;
- Door-to-door seller; and
- Food plan seller

The Act is oriented to regulate traditional, subscription-type food plan seller businesses and business practices. These are businesses that sell products on credit. Payment and/or delivery of the products is made by installments outlined in a written contract between buyer and seller. In reality, the minority of food plan operators have an operation of this kind. The typical operator makes one-time sales from catalogs, item lists, or even what happens to be on his or her truck that particular day.

A consumer may have an ongoing relationship with the vendor but it is not contractual, it is a series of individual sales events. For that reason, much of section 35-33-301, *et seq.*, Colorado Revised Statutes (C.R.S.), is inapplicable or obsolete. The product and sales documentation, and contractual relationship provisions in this section must be updated to reflect current marketplace conditions where the overwhelming majority of licensees operate route sales or door-to-door businesses.

The General Assembly should require a food plan seller to supply a consumer with a statement or receipt which documents the sales event, rather than a contract. The statement should itemize details of the transaction the same as a retail grocer is required to provide. The statement should include, at minimum, information identifying both seller and buyer, and the weight and price per pound for all products included in the transaction.

***Recommendation 7 - Update the Act by eliminating unused terms, and defining and/or redefining terms as necessary.***

There are terms in the Act that should be revised to conform with other laws, match current business situations, or because they are key to the Act but are undefined:

- The Colorado Pure Food and Drug Law, defines diseased meat as adulterated, in section 25-5-410, C.R.S. The General Assembly should adopt this definition in the Act so as to be consistent across the statutes.



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- The advertising world has changed with the advent of technology. The definition of advertising in statute should be broadened to include any medium used to promote the sale of regulated products.
  - The term “inedible meat” is undefined but used throughout the statute. The General Assembly should define this term to be consistent with the Inedible Meat, Rendering and Processing Act, section 35-59-102(6), C.R.S.
  - The term “uninspected meat” is undefined but used throughout the statute. CDA does not inspect meat or meat products. Consequently, the term should be defined as not having been inspected by the USDA.
  - The definition of meat or meat products, section 35-33-103(19), C.R.S., is dated because it lists specific animals the flesh of which is used for food. Since the original law was adopted more types of animals are now sources of food and sold in food plans, i.e., ostrich, fish, and seafood. The list should be eliminated and the definition should cover all animal species used for human consumption.

***Recommendation 8 - Change the method by which surety funds are disbursed.***

In section 35-33-403(3), C.R.S., as a condition of licensing, a food plan operator must have financial surety of up to \$50,000 to cover a consumer claiming fraud, deceit, or willful negligence against the licensee. To collect against the security, a consumer must take action in court. This recommendation is meant to streamline the process by introducing an administrative hearing.

The cost of a food plan, though it could subjectively be considered a substantial amount of money, may not be enough to drive a person who has been wronged to take action in court. The following hypothetical is applicable:

A consumer purchases a food plan that is to deliver four bundles of various cuts of beef costing \$400. The consumer receives the first two without incident but never receives the final two because the contractor is no longer in business. To receive any compensation the consumer must incur the initial cost of filing suit against the surety in a court of competent jurisdiction as well as all subsequent costs associated with the action. The consumer perceives that he or she must work through a cumbersome, intimidating legal process that is geared toward working with legal professionals rather than lay persons. Because of that perception the person chooses not to act and is out half of the investment, \$200.

If the following changes are made, the process will become easier, less expensive, and more consumer friendly to negotiate. The General Assembly demands the Commissioner of the Department of Agriculture (Commissioner) be the trustee of the surety; authorize actions against the surety to be filed with CDA and give CDA the power to decide on those actions after an administrative hearing. If the agency decides in favor of the plaintiff and a bonding company refuses to pay, CDA would pursue a cure in court, on behalf of the plaintiff.

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Requiring CDA to act against a bonding company that refuses to pay accomplishes two goals: First, it commands authority for the hearing process so that no party can choose to ignore the decisions rendered at the hearings. Second, a prime goal for recommending a hearing is that it helps keep consumers out of the court system. This provision upholds that responsibility.

These changes protect the consumer by making the system less cumbersome. If the system is less cumbersome, a wronged consumer may be more likely to pursue the loss of \$50, \$100, or more, that he or she would not have pursued previously. It is possible a consumer may perform a personal cost-benefit analysis and decide it is not worth going to court in the present system. However, that same consumer may decide that he or she is not intimidated by a simple, less expensive hearing where, if he or she is victorious, CDA will help them collect the debt. CDA will either disburse the money owed or pursue the money in court as an agent for the consumer.

Changing the current system to the proposed scheme adds new shields that protect consumer health, safety, and welfare and should be amended into the statute.

***Recommendation 9 – Remove license renewal dates in section 35-33-402(2), C.R.S., and direct the Commissioner to set renewal dates administratively.***

In order to take advantage of advances in its internal accounting, technology, and other administrative systems and fully realize administrative efficiencies, the Commissioner should be authorized to establish renewal cycles administratively.

To achieve this goal, the CDA needs the flexibility to coordinate the renewal periods for programs. Removing the licensing renewal requirement in the Act will enable the Commissioner to establish a uniform renewal period for all of the programs within the CDA, creating a uniform licensing system and increasing efficiency and customer service.

***Recommendation 10 - Direct that all civil penalties collected pursuant to the Act be credited to the General Fund.***

Section 35-33-405(3), C.R.S., provides that all civil penalties collected pursuant to the Act are credited to the ICS Cash Fund, created in section 35-1-106.5, C.R.S.

Typically, when an agency is given fining authority, any funds generated by such fines are credited to the state's General Fund. The system is set up in this manner so that an enforcement agency has no incentive to impose fines other than taking legitimate disciplinary action. When fines are credited to the agency's cash fund, there can be a perceived conflict of interest that the agency is merely trying to increase revenue.

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Although the Department of Regulatory Agencies (DORA) has no reason to believe that the Commissioner or ICS administration has acted improperly, this recommendation is important as a policy matter to prevent any such allegations from arising in the future.

If this Recommendation 10 is adopted, there is a possibility that in the long term license fees will increase to make up for the loss in revenue. Notwithstanding, it is DORA's position that fines are meant to be a disciplinary action and not a revenue infusing exercise and eliminating any perception of impropriety is more beneficial to a regulatory agency.

Sunset review criterion VII directs DORA to examine whether the disciplinary procedures protect the public or are self-serving to the profession. Paying all fines into the state's General Fund rather than into the oversight agency's operating fund, adds a layer of consumer protection into statute that does not exist today.

***Recommendation 11 – Repeal the 10 day application period for license changes.***

The way the Act is written, if a business is transferred to a new owner or location the license to operate does not transfer; the new owner must obtain a new license in order to operate a facility.

The Act also stipulates, CDA must inspect the "...equipment, facilities, surrounding premises, and operation..."<sup>50</sup> of an applicant facility, for compliance to both the Act and CDA rules, prior to the issuance of a license.

Section 35-33-401(2), C.R.S., undermines this established license process in that it allows that when a change in ownership or operation occurs, a new license application must be made within 10 days. Given that the Act does not allow licenses to be transferred to a new owner or location, and obtaining a license is predicated on passing a pre-license inspection, this 10 day condition confuses the issue by creating the appearance that the new owner can operate under the old license for 10 days. Such is not the case.

One key rationale for the state issuing licenses is that the license process provides protection for the consumer. This recommendation clarifies that no unlicensed facilities may operate at any time.

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<sup>50</sup> § 35-33-402(1), C.R.S.

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***Recommendation 12 - Repeal the custom processing exemption for grocery stores.***

There are some grocers that perform custom processing of meat animals for the owner of the meat, mostly game animals. Again, just as in larger processing plants, custom processing is not regulated by the USDA because the meat is not processed for sale. Section 35-33-107(2), C.R.S., essentially exempts grocery stores from the Act's licensing requirements. Because of the exemption, a grocery store that performs custom processing may never undergo a processing facility sanitation inspection.

If a grocer performs custom processing, it should be held to the same hygienic standards as any other custom processor. Removing this exemption protects the public by ensuring consistency and compliance among all custom processors.

***Recommendation 13 - Repeal the prohibition on non-employees being present in the processing area.***

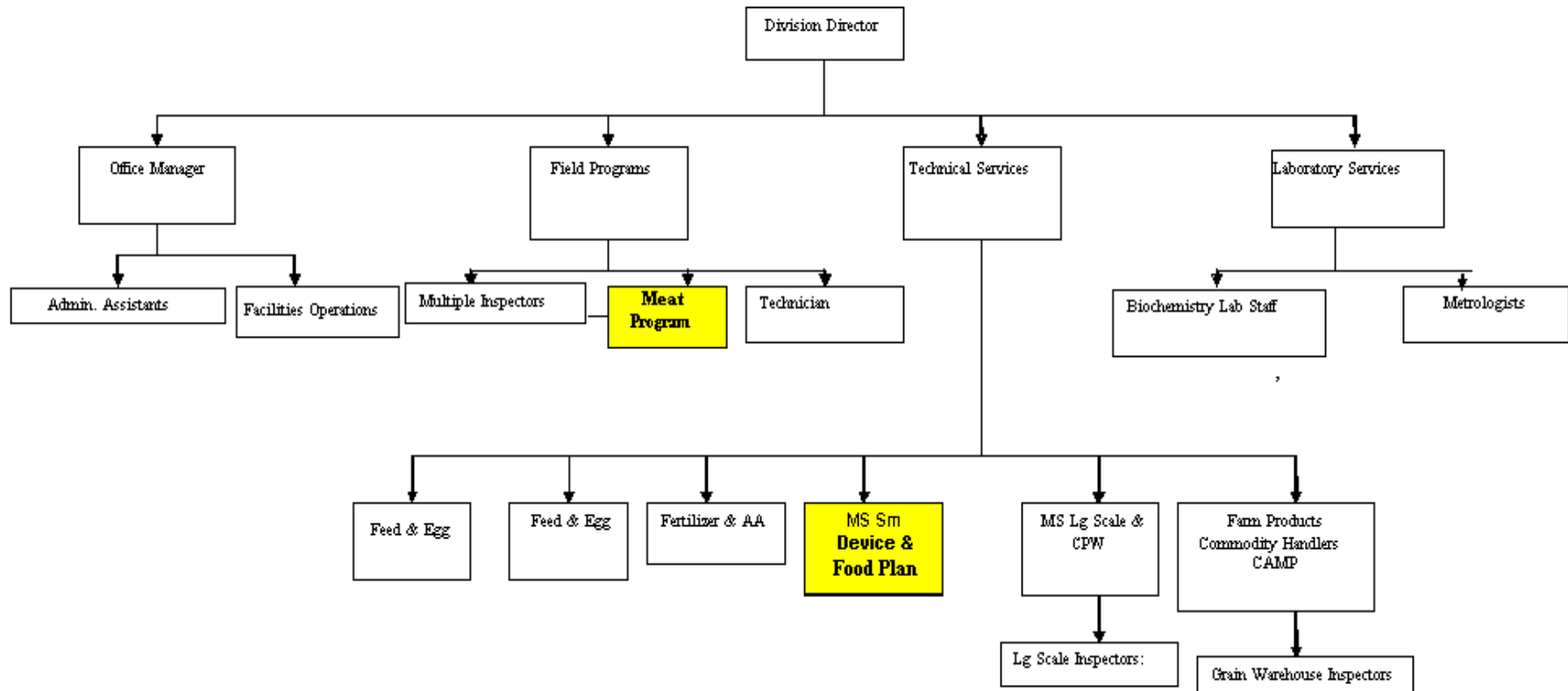
Section 35-33-201(2), C.R.S., prohibits all non-employees from being in the processing area during processing. Because other legal provisions exist that regulate hygienic and safety standards during processing, there is no significant reason or health need for this provision and it should be eliminated.

***Recommendation 14 - Repeal the 20 pound minimum threshold for regulation of bulk or bundled meat products.***

When a food plan seller sells bulk or bundled products, sales practices are regulated under the Act to protect consumers from fraud and other bad business practices. However, section 35-33-301(1)(a), C.R.S., sets a 20 pound minimum before any bulk or bundled meat becomes regulated. The regulation of sales practices should protect consumers whether a person chooses to purchase products in a food plan weighing 11 pounds or 111 pounds. The weight of the product has no bearing on the integrity of the sales process, and the arbitrary nature of a threshold undermines consumer protections.

# Appendix A – Division of Inspection & Consumer Services Fiscal Year 08-09 Organizational Chart

Colorado Department of Agriculture - Division of Inspection & Consumer Services - FY09 Organizational Chart



45 ICS Employees  
4 Other (Plants & Conserv. Svcs.)