



Dora
Department of Regulatory Agencies

Office of Policy, Research and Regulatory Reform

2008 Sunset Review: Colorado Egg Law

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 Egg Law. 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 21 of Title 35, C.R.S. The report also discusses the effectiveness of the Department of Agriculture and staff in carrying out the intent of the statutes and makes recommendations for statutory and administrative 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: Colorado Egg Law

Summary

What Is Regulated?

In Colorado, eggs are inspected at wholesaler and retailer facilities to ensure eggs sold to consumers are wholesome, unadulterated and properly labeled and packaged.

Why Is It Regulated?

The Colorado Egg Law (CEL) protects the consumer by ensuring that eggs for sale by wholesalers and retailers meet the quality standards enacted by the United States Department of Agriculture (USDA).

Who Is Regulated?

Every person who buys eggs to resell in Colorado is required to obtain a license from the Colorado Department of Agriculture. In fiscal year 06-07, 107 wholesale egg licenses and 2,499 retail egg licenses were issued.

How Is It Regulated?

The CEL is enforced by the Colorado Department of Agriculture (CDA). In order to effectively provide adequate consumer protection, CDA inspectors are charged with conducting inspections of eggs at wholesaler and retailer facilities. The CDA issues two licenses related to the sale of eggs in Colorado: wholesaler and retailer. In order to receive either a wholesaler or retailer license, an applicant is required to complete an application provided by the CDA and pay the applicable licensing fee. The CDA has the ability to issue fines to licensees for various violations. CDA staff is also permitted to issue stop sale notices for violations of the CEL or the corresponding rules.

What Does It Cost?

In fiscal year 06-07, the total expenditures to oversee the egg inspection program were \$193,186, and there were 1.8 full-time employees associated with the program.

What Disciplinary Activity Is There?

Between fiscal years 02-03 and 06-07, the CDA's disciplinary activities included:

- Fines – 203
- Stop Sale Notices - 731

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.

Key Recommendations

Continue the Colorado Egg Law for 11 years, until 2020.

The purpose of the CEL is to ensure that eggs sold in Colorado by wholesalers and retailers meet quality standards enacted by the USDA. The CEL also protects consumers by ensuring that eggs are properly refrigerated, which provides protections from possible health safety issues, including Salmonella. In order to ensure that the public is adequately protected, the CDA employs inspectors who ensure that licensees are operating in compliance with the CEL.

Remove the wholesaler and retailer licenses from statute and create one “dealer” license.

Currently, there are two separate egg licenses in Colorado: wholesaler and retailer. The licensing fees for wholesaler licenses are determined by the total number of cases of eggs sold per week during the previous calendar year. Conversely, licensing fees for retailers are determined by the annual gross sales of products, excluding gasoline, for the previous calendar year. Creating one “dealer” license would streamline egg licenses and eliminate two different criteria currently utilized in determining licensing fees.

Major Contacts Made During This Review

Colorado Department of Agriculture
Colorado Egg Producers Association
Colorado Farm Bureau
Colorado Retail Council
Rocky Mountain Food Industry Association

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

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

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.

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 record-keeping 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.

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.

The regulatory functions of the Colorado Egg Law (CEL) administered by the Colorado Department of Agriculture (CDA) relating to Article 21 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 CDA pursuant to section 24-34-104, C.R.S.

The purpose of this review is to determine whether the CEL should be continued for the protection of the public and to evaluate the performance of the CEL and staff of the CDA. During this review, the CDA 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 toured egg producer facilities, interviewed CDA staff, interviewed representatives of the Colorado Egg Producers Association, interviewed staff at wholesaler and retailer facilities, interviewed Rocky Mountain Food Industry Association staff, reviewed Colorado statutes and CEL rules, and reviewed the laws of other states.

Profile of the Industry

Information provided by CDA staff indicates that Colorado poultry egg producers generated approximately 1.8 billion eggs in 2006. CDA staff also stated that approximately 30 percent of the eggs produced in Colorado are exported out of the state. An estimated 15 percent of eggs consumed by Coloradans are eggs that have been imported.

Although the CDA does not officially track the number of eggs sold in Colorado, staff estimates that more than 125 million eggs are sold to Coloradans annually.

In Colorado, eggs are regulated by the CDA. The CDA is responsible for ensuring that the grade, size and weight of eggs sold in Colorado meet federal standards developed by the United States Department of Agriculture (USDA). The standards employed by the USDA for quality of an egg were developed on the basis of both exterior and interior quality factors.² Thus, both the exterior and interior factors determine the grade of an egg.

Exterior factors in assessing the grade of an egg focus on certain characteristics of the eggshell. Specifically, for grading purposes, the shell is examined for proper shape, texture, soundness and cleanliness.³

The USDA has three classifications regarding the eggshell: normal, practically normal and abnormal. A normal eggshell has an oval shape with one end larger than the other, and it tapers toward the smaller end.⁴ A practically normal eggshell approximates the usual shape and is sound and free of thin spots.⁵ An abnormal shell may be somewhat unusual or decidedly misshapen or faulty in soundness or strength or may show pronounced ridges or thin spots.⁶

The interior parts of an egg are also considered when assessing the grade and quality of an egg. The three interior parts of an egg are:

- Air cell;
- Albumen (white); and
- Yolk.

The air cell is the empty space between the albumen and shell at the large end of the egg.⁷ When an egg is first laid, it is warm, and as it cools, the contents contract and the inner shell membrane separates from the outer shell membrane to form the air cell.⁸

² University of Florida. *Egg Quality*. Retrieved May 5, 2008, from <http://edis.ifas.ufl.edu/PS020>

³ United States Department of Agriculture, *Agricultural Handbook Number 75: Egg-Grading Manual*, (2000) p. 17.

⁴ United States Department of Agriculture, *Agricultural Handbook Number 75: Egg-Grading Manual*, (2000) p. 17.

⁵ United States Department of Agriculture, *Agricultural Handbook Number 75: Egg-Grading Manual*, (2000) p. 18.

⁶ United States Department of Agriculture, *Agricultural Handbook Number 75: Egg-Grading Manual*, (2000) p. 19.

⁷ Learn More About Eggs. *Basic Egg Facts*. Retrieved May 5, 2008, from <http://www.aeb.org/LearnMore/EggFacts.htm>

⁸ American Egg Board, *Eggyclopedia 3rd Edition*, (1994) p. 1.

The albumen accounts for most of an egg's liquid weight, about 67 percent.⁹ It consists of four alternating layers of thick and thin consistencies.¹⁰

The yolk makes up approximately 33 percent of the liquid weight of an egg, and it contains all of the fat in the egg and a little less than half of the protein.¹¹

The following grades of eggs are available to consumers:

- Grade AA;
- Grade A; and
- Grade B.

A grade "AA" egg is the highest quality of egg based on both exterior and interior characteristics. To be classified as a grade "AA" egg, the shell must be clean, unbroken and at least practically normal.¹² Also, the air cell within the egg must not exceed one-eighth of an inch in depth, may show unlimited movement and may be free or bubbly.¹³ The albumen must be clear and firm, so that the yolk is only slightly defined when the egg is twirled before the candling light.¹⁴ A candling light is a high-intensity light, which makes the interior of an egg visible.¹⁵ To obtain a grade "AA" classification, an egg yolk must be practically free from apparent defects.

The standards for a grade "A" egg are closely related to a grade "AA" egg; however, an egg that secures a grade "A" rating is rated on a slightly less stringent scale. For instance, to qualify as a grade "A" egg, the air cell must not exceed three-sixteenths of an inch in depth, may show unlimited movement and may be free and bubbly.¹⁶ The albumen in a grade "A" egg must be clear and at least reasonably firm, so that the yolk outline is only fairly well defined when the egg is twirled before a candling light.¹⁷ The yolk in a grade "A" egg must be practically free from apparent defects.¹⁸

The final grade of egg is grade "B." The standards for a grade "B" egg are less stringent than both grade "AA" and "A." To qualify as a grade "B" egg, the shell must be unbroken, may be abnormal and may have slightly stained areas.¹⁹ Moderately stained areas are permitted if they do not cover more than one-thirty-second of the shell surface if localized, or one-sixteenth of the shell surface if the stains are scattered across the eggshell.²⁰

⁹ American Egg Board, *Eggcyclopedia 3rd Edition*, (1994) p. 1.

¹⁰ American Egg Board, *Eggcyclopedia 3rd Edition*, (1994) p. 1.

¹¹ American Egg Board, *Eggcyclopedia 3rd Edition*, (1994) p. 52.

¹² United States Department of Agriculture, *Agricultural Handbook Number 75: Egg-Grading Manual*, (2000) p. 27.

¹³ United States Department of Agriculture, *Agricultural Handbook Number 75: Egg-Grading Manual*, (2000) p. 27.

¹⁴ United States Department of Agriculture, *Agricultural Handbook Number 75: Egg-Grading Manual*, (2000) p. 27.

¹⁵ American Egg Board, *Eggcyclopedia 3rd Edition*, (1994) p. 6.

¹⁶ United States Department of Agriculture, *Agricultural Handbook Number 75: Egg-Grading Manual*, (2000) p. 27.

¹⁷ United States Department of Agriculture, *Agricultural Handbook Number 75: Egg-Grading Manual*, (2000) p. 27.

¹⁸ United States Department of Agriculture, *Agricultural Handbook Number 75: Egg-Grading Manual*, (2000) p. 27.

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

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

The air cell on a grade “B” egg may exceed three-sixteenths of an inch in depth, may show unlimited movement, and may be free and bubbly.²¹ The albumen may be weak and watery, so that the yolk outline is plainly visible when the egg is twirled before the candling light.²² The yolk within a grade “B” egg may be dark, enlarged and flattened.²³

A grade “B” egg may also contain small blood spots or meat spots (aggregating not more than one-eighth of an inch).²⁴

A summary of the USDA standards for grading “AA,” “A” and “B” eggs can be found in Appendix A on page 32.

The CDA also enforces the USDA standards for the weight and size of eggs. There are currently several weight classes for eggs. The following includes both the weight classes as well as the corresponding minimum weight per dozen (in ounces) for the recognized weight classes, including:

- Jumbo - 30;
- Extra Large - 27;
- Large - 24;
- Medium - 21;
- Small - 18; and
- Peewee - 15.

History of Regulation

In the early years of American agriculture, many farmers had chickens, and collected eggs for their own use or for sale to friends, neighbors and the local grocer.²⁵ As the number of eggs for sale increased, as well as the size of the farms producing eggs, so did the demand for eggs.

Federal Regulations

Regulation of the egg industry has continued to evolve since regulation was first introduced in the Farm Products Inspection Act (FPIA) of 1917.²⁶ The purpose of the FPIA was to provide uniform grades and grading service for voluntary use.²⁷ In 1925, the authority provided under the FPIA was provided each year by an act of Congress that also provided appropriations to the USDA.²⁸

²¹ United States Department of Agriculture, *Agricultural Handbook Number 75: Egg-Grading Manual*, (2000) p. 27.

²² United States Department of Agriculture, *Agricultural Handbook Number 75: Egg-Grading Manual*, (2000) p. 27.

²³ United States Department of Agriculture, *Agricultural Handbook Number 75: Egg-Grading Manual*, (2000) p. 27.

²⁴ United States Department of Agriculture, *Agricultural Handbook Number 75: Egg-Grading Manual*, (2000) p. 27.

²⁵ Agricultural Marketing Resource Center. *Eggs Profile*. Retrieved May 3, 2008, from

<http://www.agmrc.org/agmrc/commodity/livestock/poultry/eggsprofile.htm>

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

²⁷ United States Department of Agriculture, *Agricultural Handbook Number 75: Egg-Grading Manual*, (2000) p. 47.

²⁸ United States Department of Agriculture, *Agricultural Handbook Number 75: Egg-Grading Manual*, (2000) p. 47.

The Agricultural Market Act of 1946 was an important law in the implementation of egg standards as well as the current grading system, still in use today. The U.S. standards for quality of individual shell eggs serve as a basis not only for establishing U.S. grades, but also for developing state standards and grades.²⁹

In 1970, the Egg Products Inspection Act (EPIA) was enacted. The EPIA formalized uniform standards for grading eggs. State and local jurisdictions were required to adhere to federal egg standards. This prompted states to amend their laws if they differed from existing federal standards, which enabled the same standards to apply throughout the country.

State Regulations

In 1933, Colorado enacted its first egg law. The intent of the egg law was threefold:

- Prevent the sale of eggs that were unfit for human consumption;
- Prevent fraud and deception in the sale of eggs; and
- Promote and develop the egg industry.

In the 1930s, licensing fees generated enough revenue to fund the program, which employed eight inspectors and one supervisor. There were four separate licensing categories, including:

- Producer;
- Retailer;
- Country receiver; and
- Wholesaler.

In 1956, the CEL was reenacted, replacing the original 1933 law. The major alteration in the 1956 law was the change in licensing fees for retailers. The 1956 law required the payment of licensing fees based on gross volume sales. The fee schedule based on gross sales was as follows:

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

The 1960s saw a decrease in licensing fees, and because the regulatory program created by the egg law was cash funded, the decrease in licensing fees contributed to a decrease of inspection staff within the CDA. In fact, in 1963, the CDA had one clerk, one assistant supervisor and one field inspector to cover the entire egg program.

²⁹ United States Department of Agriculture, *Agricultural Handbook Number 75: Egg-Grading Manual*, (2000) p. 47.

In 1964, the Governor provided \$50,000 to the CDA to hire four additional field inspectors.

In 1994, DORA completed a sunset review of the CEL. The sunset review included several recommendations to modernize and increase the effectiveness of the CEL. For example, the 1994 sunset review recommended the discontinuation of the requirement that egg candlers obtain a license from the CDA. An egg candler is a person who uses a transmitted light to view and examine the inside of an egg. The sunset review found that requiring egg candlers to obtain a license was unnecessary due to the fact that egg candlers already worked for wholesalers who had an economic interest in ensuring that the eggs they sell meet all standards and grades. Therefore, the sunset review concluded, it was in the wholesaler's business interest to make sure egg candlers know how to properly candle eggs. The General Assembly subsequently approved the recommendation to remove the licensing requirement for egg candlers.

Legal Framework

The Colorado Egg Law (CEL) is created in section 35-21-101, *et seq.*, Colorado Revised Statutes, (C.R.S.). The CEL directs the Commissioner of Agriculture (Commissioner) to promulgate rules related to the labeling, sale, storage, and inspection of eggs, as well as the record-keeping necessary for the enforcement of the CEL.

The Commissioner enforces labeling requirements for eggs sold in Colorado. Specifically, Part 3 within the rules related to the CEL, outlines the labeling, date of packing and size and grade requirements.

Every case, carton, or container of eggs at the time of packing must be labeled with letters and numerals at least one-eighth of an inch in height, with one of the following means of identification:³⁰

- The name and address of the producer or person who packed the eggs;
- The United States Department of Agriculture's plant number or shell egg surveillance registration number; or
- The egg license number issued to the packer by another state, using the two-letter abbreviations of the state.

Additionally, every case, carton or container of eggs must have the date that the eggs were first packed. The pack date must be stated numerically by month and day.³¹

Every case, carton or container of eggs must also have the grade and weight designations imprinted on the container.³²

Also, every wholesaler and retailer must store, display, transport or otherwise maintain eggs at an ambient temperature of not more than 41 degrees Fahrenheit.³³ Eggs are not permitted to be stored, displayed or transported below 33 degrees Fahrenheit.³⁴

³⁰ Colorado Department of Agriculture. Rules and Regulations Pertaining to the Administration and Enforcement of the Colorado Egg Act. Part 3. Labeling Requirements.

³¹ Colorado Department of Agriculture. Rules and Regulations Pertaining to the Administration and Enforcement of the Colorado Egg Act. Part 3. Pack Date Requirements.

³² Colorado Department of Agriculture. Rules and Regulations Pertaining to the Administration and Enforcement of the Colorado Egg Act. Part 3. Size and Grade Requirements.

³³ Colorado Department of Agriculture. Rules and Regulations Pertaining to the Administration and Enforcement of the Colorado Egg Act. Part 1. Temperature Requirements.

³⁴ Colorado Department of Agriculture. Rules and Regulations Pertaining to the Administration and Enforcement of the Colorado Egg Act. Part 1. Temperature Requirements.

Every person who buys eggs to resell in Colorado is required to obtain a license from the Colorado Department of Agriculture (CDA). Currently, there are two licenses available: wholesaler and retailer. A wholesaler is defined in statute as any person buying eggs from producers, or other wholesalers and selling to retailers, restaurants, manufactures or other wholesalers.³⁵ A retailer is defined in statute as any person buying eggs and selling directly to consumers.³⁶

It should be noted that a person who produces less than 250 dozen eggs per month and sells eggs only at retail facilities, is exempt from CDA regulation.

Wholesalers and retailers who possess an egg license in Colorado are required to renew their licenses annually (each July).

In order to receive a license (either wholesaler or retailer), a person must complete a CDA application, which solicits the following information:³⁷

- The name of the applicant;
- If the applicant is a firm, the names of its members;
- If the applicant is a corporation, the names of its officers;
- The location of the business; and
- The telephone number.

Also, there are a number of licensing classifications for wholesalers, which are based on the average number of cases of eggs sold per week in the previous year.³⁸ New wholesalers that do not have previous sales records are required to obtain a Class I wholesaler license. The various wholesaler license classifications along with the cases of eggs sold per week are as follows:³⁹

- Class I – Up to and including 50 cases per week;
- Class II – Over 50 cases up to and including 100 cases per week;
- Class III – Over 100 cases up to and including 250 cases per week;
- Class IV – Over 250 cases up to and including 750 cases per week; and
- Class V – Over 750 cases per week.

³⁵ § 35-21-101(19), C.R.S.

³⁶ § 35-21-101(18), C.R.S.

³⁷ § 35-21-104(3)(a-e), C.R.S.

³⁸ § 35-21-104(4)(b), C.R.S.

³⁹ § 35-21-104(4)(b), C.R.S.

The licensing classifications for retailers are based on annual gross sales, excluding the sale of gasoline, of the establishment for the previous calendar year.⁴⁰ Gasoline sales are excluded in an attempt to provide a more consistent measure for assessing licensing fees. Choosing not to exclude gasoline sales could result in the same licensing fee being assessed on businesses that differ greatly in size and gross annual sales. For example, a gas station/convenience store that sells large amounts of gasoline but has very modest sales of other merchandise could pay the same licensing fee as a grocery store that sells a large volume of merchandise but does not offer gasoline to its customers. The exemption was created to mitigate the scenario presented above and provide a more equitable assessment of licensing fees.

Retailers new to Colorado are issued a Class I retailer license by the CDA. The retailer license classifications are as follows:⁴¹

- Class I – Gross sales up to and including \$50,000;
- Class II – Gross sales over \$50,000 up to and including \$100,000;
- Class III – Gross sales over \$100,000 up to and including \$200,000;
- Class IV – Gross sales over \$200,000 up to and including \$500,000;
- Class V – Gross sales over \$500,000.

Any person who violates any provision of the CEL may be guilty of a misdemeanor.⁴² If a violation of the CEL has occurred, the Commissioner notifies the District Attorney in the judicial district in which the violation occurred.⁴³ Any person who violates any of the provisions of the CEL can be fined up to but not more than \$500.

The Commissioner may also impose a civil penalty on any person who violates any provision of the CEL or rules promulgated under the CEL. A civil penalty imposed by the Commissioner cannot exceed \$750 per day per violation.⁴⁴

The Commissioner may enforce stop sale notices for violations of the CEL or rules and regulations pertaining to the administration and enforcement of the CEL. Stop sale notices may be issued for various violations, including, but not limited to:⁴⁵

- Selling eggs more than 45 days after the pack date;
- Eggs offered for sale by any wholesaler or retailer that are below the minimum standards and requirements of quality and/or weight for the grade and size labeled; and
- Wholesalers or retailers selling eggs without a license issued by the CDA.

⁴⁰ § 35-21-104(4)(a), C.R.S.

⁴¹ § 35-21-104(4)(a), C.R.S.

⁴² § 35-21-107(1), C.R.S.

⁴³ § 35-21-107(1), C.R.S.

⁴⁴ § 35-21-107.5(1)(a), C.R.S.

⁴⁵ Colorado Department of Agriculture. Rules and Regulations Pertaining to the Administration and Enforcement of the Colorado Egg Act. Part 5. Stop Sale Notices.

Program Description and Administration

The Colorado Egg Law (CEL) is enforced by the Colorado Department of Agriculture (CDA).

In order to effectively enforce the CEL, the CDA devoted a total of 1.8 full-time equivalent (FTE) employees to provide professional support in fiscal year 06-07 to the egg inspection program. The 1.8 FTE who provided professional support for the egg inspection program are as follows:

- Administrative Assistant – 0.2 FTE;
- Program Administrator – 0.4 FTE; and
- State Inspectors – 1.2 FTE.

Table 1 highlights the total expenditures for the egg inspection program in fiscal years 02-03 through 06-07. CDA staff was not able to provide data for fiscal year 02-03 due to the fact that the program was general funded, so specific program costs were not available. In fiscal years 03-04 through 06-07, the egg inspection program was cash funded.

**Table 1
Total Expenditures**

Fiscal Year	Expenditures
02-03	Data Unavailable
03-04	\$189,978
04-05	\$174,908
05-06	\$201,393
06-07	\$193,186

CDA staff is responsible for ensuring the eggs sold to consumers in Colorado are wholesome, unadulterated and properly labeled and packaged. In order to effectively provide adequate consumer protection, CDA inspectors are charged with conducting inspections of eggs at wholesaler and retailer facilities. Regardless of the type of facility at which the inspection is conducted, the same United States Department of Agriculture (USDA) standards apply.

Licensing

The CDA issues two licenses related to the sale of eggs in Colorado: wholesaler and retailer. In order to receive either a wholesaler or retailer license, an applicant is required to complete an application provided by the CDA and pay the applicable licensing fee. Licenses must also be renewed annually.

Table 2 illustrates the number of wholesaler licenses issued by the CDA for all five licensing classifications during the past five fiscal years.

Table 2
Total Number of Wholesale Egg Licenses Issued in Fiscal Years 02-03 through 05-06

Wholesale License Classifications	FY 02-03	FY 03-04	FY 04-05	FY 05-06	FY 06-07
Class I	Data Unavailable	24	37	45	45
Class II	Data Unavailable	5	6	9	10
Class III	Data Unavailable	8	9	8	9
Class IV	Data Unavailable	22	22	21	25
Class V	Data Unavailable	25	18	18	18
Total	78	84	92	101	107

CDA staff was able to provide the total number of wholesaler licenses issued in fiscal year 02-03; however, it did not disaggregate licenses by classification during fiscal year 02-03. In order to more effectively track and monitor the number of licenses issued, the CDA began tracking the number of licenses within each of the classifications in fiscal year 03-04.

Also, Table 2 highlights an increase in Class I wholesaler licenses from 24 in fiscal year 03-04 to 45 in fiscal year 06-07. According to CDA staff, the increase in Class I wholesaler licenses is attributable to the opening of new facilities throughout the state. CDA staff was unable to provide information concerning the decrease in Class V wholesaler licenses from 25 in fiscal year 03-04 to 18 in fiscal year 06-07.

Table 3 outlines the current wholesaler license fee schedule, according to classification.

Table 3
Wholesaler License Fees

Wholesaler License Classifications	License Fees
Class I	\$50
Class II	\$100
Class III	\$150
Class IV	\$300
Class V	\$500

Table 4 delineates the number of retailer egg licenses issued by the CDA for all five licensing classifications during the past five fiscal years. Again, CDA staff was able to provide the total licenses issued in fiscal year 02-03; however, it did not disaggregate licenses by classification during fiscal year 02-03. In order to more effectively track and monitor the number of licenses issued, the CDA began tracking the various classifications in fiscal year 03-04.

Table 4
Total Number of Retailer Egg Licenses Issued in Fiscal Years 02-03 through 05-06

Retailer License Classifications	FY 02-03	FY 03-04	FY 04-05	FY 05-06	FY 06-07
Class I	Data Unavailable	320	315	369	524
Class II	Data Unavailable	110	116	95	111
Class III	Data Unavailable	111	96	126	114
Class IV	Data Unavailable	316	226	195	191
Class V	Data Unavailable	1,409	1,387	1,503	1,559
Total	2,388	2,266	2,140	2,288	2,499

Class I licenses are issued to retailers who have gross annual sales, excluding gasoline sales, of up to \$50,000. Class I retailer licenses are also issued to retailers who have not previously possessed a retailer egg license. According to CDA staff, almost half of the Class I retailer licenses issued during fiscal years 03-04 through 06-07 were issued to new retailers. In fact, CDA staff stated that in fiscal year 06-07, 312 out of 524 (59.54 percent) Class I licenses issued were for new retailers in Colorado.

Table 5 illustrates the retailer license fees by classification.

Table 5
Retailer License Fees

Retail License Classifications	Retailer License Fees
Class I	\$15
Class II	\$25
Class III	\$35
Class IV	\$50
Class V	\$75

Table 6 highlights the number of retailer truck egg licenses issued by the CDA during the past five fiscal years; however, CDA staff was unable to provide information during fiscal year 02-03. Retailer egg trucks are utilized by companies that deliver eggs to consumer's residences. It should be noted that the CDA does not charge a fee to obtain a retailer truck license. Instead, the license fee is collected from the retailer licensing fee. Also, as outlined in the CEL, a retailer truck license is a Class I retailer license, not a separate license.

Table 6
Total Number of Retailer Truck Egg Licenses Issued in Fiscal Years 02-03 through 06-07

Retail Truck Licenses	FY 02-03	FY 03-04	FY 04-05	FY 05-06	FY 06-07
	Data Unavailable	257	258	149	161

Inspections

In Colorado, eggs are inspected at wholesaler and retailer facilities to ensure quality, wholesomeness and proper labeling.⁴⁶ Inspectors are responsible for inspecting a variety of products, in addition to eggs, including, but not limited to:

- Measurement Standards Small Device/Retail Inspection Program;
- Measurement Standards Large Device Inspection Program;
- Feed Program; and
- Fertilizer Program.

For example, when an inspector enters a grocery store, he or she will examine the eggs for sale to the consumer, inspect for cleanliness, cracks, proper refrigeration and correct grading, examine the scales for accuracy, and check animal feed as well as plant fertilizers.

When an inspector enters either a wholesale or retail facility to conduct an egg inspection, he or she will first visually inspect the stock or lot of eggs. The lot that the inspector chooses is determined by the type of inventory available. Once an inspector determines which lot of eggs he or she will inspect, a sample is selected for inspection.

Inspectors may inspect eggs based on the following samples:

- Grade of eggs (e.g., "AA," "A" or "B");
- Eggs from a specific producer, regardless of grade; or
- Specific pack date (the date the eggs were packaged).

⁴⁶ Colorado Department of Agriculture. *Egg Inspection Information*. Retrieved April 1, 2008, from <http://www.colorado.gov/cs/Satellite?c=Page&childpagename=Agriculture-Main%2FCDAGLayout&cid=1167928392548&p=1167928392548&pagename=CDAGWrapper&rendermode=preview>

Currently, there are two types of egg inspections: initial and full. During an initial inspection, an inspector selects random samples of eggs selected from the same lot. The sample size is determined by the dozens of eggs in a lot. For example, if a lot contains 30 dozen eggs, 100 eggs will be inspected. In order for a lot to pass an initial inspection, the USDA developed an acceptable tolerance, depending on the grade of the eggs. In the example outlined above, 72 percent (or 72) of the eggs inspected out of 100 must meet the grade “AA” quality standards, which requires the eggshell to be at least practically normal, the air cell to be not more than one-eighth of an inch, the albumen to be clear and firm and the yolk to be free from apparent defects. In determining the grade of an egg during an inspection, the egg must be candled by the inspector.

A complete listing of the sample size for an initial screening inspection can be found in Appendix B on page 33.

An initial inspection includes a number of factors, including:

- Checking for cleanliness and shape of the eggshell;
- Checking for checks or leaks; and
- Ensuring proper storage of eggs (including appropriate temperature).

The shape of the eggshell is one of the determining factors in the grading process, and the inspector inspects the eggshell to verify that the cleanliness, as well as the stains on the shell, are in compliance with the grade of the egg on the label.

The inspector is also responsible for ensuring that the lot of eggs inspected is within acceptable USDA tolerance guidelines regarding the number of checks. A check is defined by the USDA as an egg that has a broken shell or a crack in the shell but its shell membranes are intact and its contents do not leak.⁴⁷

In order to pass an inspection, the lot of eggs must also be within USDA acceptable tolerance guidelines regarding the number of leaker eggs. A leaker egg is defined as an egg that has a crack or break in the shell and the shell membranes to the extent that the egg contents are exuding or free to exude through the shell.⁴⁸

Inspectors measure the current temperature at which the eggs are stored, which must meet the requirements outlined in the CEL rules.

⁴⁷ United States Department of Agriculture, *Agricultural Handbook Number 75: Egg-Grading Manual*, (2000) p. 27.

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

If the lot of eggs passes an initial inspection, the eggs may be sold to consumers. However, if the lot of eggs fails an initial inspection, a full inspection of the lot must be completed. A full inspection of eggs includes the same factors in the initial inspection. However, the number of eggs inspected in a full inspection is expanded. If the lot does not pass a full inspection, a stop sale notice is issued to the lot. If the lot passes the full inspection, the eggs are cleared to be sold to the public.

Additionally, the CDA utilizes a Risk Based Management System (RBMS), which determines the frequency of inspections at wholesaler and retailer facilities. The basic premise of RBMS is that wholesaler and retailer facilities are assigned a risk value of between “0” (no violations identified) and “6” (several or major violations identified). The wholesaler and retailer facilities are assigned a risk value based on several inspections. RBMS assigns a risk value based on the average risk for each facility.

The RBMS assists inspectors in planning future inspections based on risk levels. The risk levels are outlined as follows:

- Low risk (risk average greater than “1” and less than “3”);
- Medium risk (risk average greater than “3” and less than “5”); and
- High risk (risk average greater than or equal to “5”).

If a facility’s risk average is low, the inspector will plan the next inspection a year later. Medium-risk facilities are inspected within six months, and high-risk facilities are inspected within three months.

Table 7 outlines the total number of egg inspections completed by inspectors for fiscal years 02-03 through 06-07.

Table 7
Total Number of Egg Inspections

Fiscal Year	Total Number of Inspections
02-03	5,580
03-04	4,039
04-05	436
05-06	446
06-07	402

In fiscal years 02-03 and 03-04, each grade of eggs was considered a separate inspection. Since fiscal year 03-04, CDA counts each visit to a wholesale or retail facility as one inspection, regardless of the grades of eggs inspected. The data included in Table 7 highlight the change in administrative record-keeping practices for egg inspections.

Complaints/Disciplinary Actions

The CDA has the ability to issue fines to licensees for various violations, including, failing to adhere to the state-required acceptable temperature requirements or selling eggs without a valid egg license issued by the CDA.

According to staff within the CDA, the vast majority of fines issued by the CDA are attributable to the aforementioned violations. Table 8 outlines the total fines and value of the fines in fiscal years 02-03 through 06-07. In fiscal year 06-07, all six fines were imposed for failure to possess a valid egg license.

**Table 8
Total Fines and Value of Fines Issued**

Fiscal Year	Total Number of Fines	Total Value of Fines
02-03	27	\$540
03-04	83	\$2,242
04-05	25	\$1,010
05-06	62	\$1,237
06-07	6	\$120
Total	203	\$5,149

The substantial decrease in fines issued and the value of fines during fiscal year 06-07 was due to the fact that the CDA instituted a program to inform licensees that their licenses were delinquent. Prior to fiscal year 06-07, inspectors would issue a fine if they found a license that was delinquent. The new program of contacting licensees who are delinquent has drastically decreased the fines issued to licensees and enabled inspectors to focus on egg inspections rather than issuing fines for delinquent licenses.

CDA staff is also permitted to issue stop sale notices for violations of the CEL or the corresponding rules. For example, stop sale notices can be issued if an inspector identifies any wholesaler or retailer selling eggs that do not meet minimum standards and requirements of quality and/or weight for the grade and size labeled on the package.⁴⁹ A stop sale notice is an order to cease selling eggs that are not in compliance with the CEL or the corresponding rules.

Table 9 illustrates the total number of stop sale notices issued by CDA staff in fiscal years 02-03 through 06-07. Data are not available for fiscal years 02-03 and 03-04. The CDA has updated and improved its record-keeping practices in order to effectively track and monitor the number of stop sale notices issued to licensees.

⁴⁹ Colorado Department of Agriculture. Rules and Regulations Pertaining to the Administration and Enforcement of the Colorado Egg Act. Part 5. Stop Sale Notices.

According to CDA staff, the increase in stop sale notices from 109 in fiscal year 04-05 to 379 in fiscal year 06-07 is attributable to the implementation of the RBMS, which conducts egg inspections based on an assigned risk level.

Table 9
Total Number of Stop Sale Notices Issued

Fiscal Years	Number of Stop Sale Notices Issued
02-03	Data not available
03-04	Data not available
04-05	109
05-06	243
06-07	379
Total	731

Analysis and Recommendations

Recommendation 1 – Continue the Colorado Egg Law for 11 years, until 2020.

The first sunset criterion asks whether regulation is necessary to protect the public health, safety and welfare. The purpose of the Colorado Egg Law (CEL) is to provide protection to the consumer by ensuring that eggs for sale by wholesalers and retailers meet the quality standards enacted by the United States Department of Agriculture (USDA). The CEL, as well as the corresponding rules, also protects the consumer by ensuring that eggs for sale are properly refrigerated. Doing so provides additional protection to the consumer from possible health safety issues, including Salmonella. The Colorado Department of Agriculture (CDA) is charged with enforcing these standards.

In order to ensure that the public is adequately protected, the CDA employs inspectors who conduct periodic inspections of both wholesaler and retailer facilities. Inspectors are responsible for ensuring that facilities are operating in compliance with the CEL as well as the corresponding rules. When determining the frequency of egg inspections, inspectors utilize a Risk Based Management System (RBMS), which was developed by CDA staff.

The RBMS is a numeric system (“0” to “6”) used for assessing the frequency of inspections. A wholesale or retail facility is assigned a number from “0” to “6,” which is based on violations from previous inspections. The higher the number, the greater the risk, and, subsequently, the more often a facility is inspected.

The risk levels are:

- Low risk (risk average greater than “1” and less than “3”);
- Medium risk (risk average greater than “3” and less than “5”); and
- High risk (risk average greater than or equal to “5”).

If a facility’s risk average is low, the inspector will plan the next inspection for a year later. Medium-risk facilities are inspected within six months, and high-risk facilities are inspected within three months.

During an inspection, an inspector completes the following tasks, including, but not limited to:

- Measures the current temperature at which the eggs are stored;
- Checks to ensure the proper dates are included on the packages;
- Candles eggs to inspect the inside of the eggs;
- Checks for cracked or leaking eggs; and
- Measures the air cell contained within eggs.

Inspectors are also permitted to issue stop sale notices for violations of the CEL or the rules pertaining to the CEL. When a stop sale notice is issued, no person is authorized to sell the eggs for which the stop sale notice has been issued.

The current system utilized by the CDA concerning the regulation of eggs in Colorado serves to insulate the consumer from harm. In order to achieve optimal consumer protection, the CDA utilizes inspections to enforce quality standards developed by the USDA and to ensure that eggs are properly stored and refrigerated.

During this sunset review, the Department of Regulatory Agencies did not identify any major policy issues associated with the CEL. Instead, this review revealed that the current CEL is providing effective protection to Colorado consumers; therefore, the General Assembly should continue the CEL for 11 years, until 2020.

Recommendation 2 – Remove the wholesaler and retailer licenses from statute and create one “dealer” license.

There are two separate egg licenses available in Colorado: wholesaler and retailer. A wholesaler is defined in section 35-21-101(19), Colorado Revised Statutes (C.R.S.), as a person who buys eggs from egg producers, or other wholesalers and sells eggs to restaurants, manufacturers or other wholesalers.

The licensing fees for a wholesaler license are determined by the total number of cases of eggs sold per week during the previous calendar year. Currently, there are five licensing classifications associated with wholesaler licenses. The more cases of eggs a wholesaler sells, the higher the licensing fee paid to the CDA. Table 10 delineates the five wholesaler classifications as well as the corresponding fees associated with each classification.

**Table 10
Wholesaler Licensing Classifications and Associated Fees**

Wholesaler License Classifications	License Fees
Class I	\$50
Class II	\$100
Class III	\$150
Class IV	\$300
Class V	\$500

Additionally, a retailer is defined in section 35-21-101(18), C.R.S., as a person who sells eggs directly to consumers. Retailer licensing fees are determined by the annual gross sales of products, excluding gasoline, for the previous calendar year.

There are also five separate licensing classifications for retailer licenses. The tiered classification system is premised on the idea that retailers that have greater annual gross sales are required to pay higher retailer licensing fees to the CDA. Table 11 illustrates the five classifications and the corresponding fee schedule.

Table 11
Retailer Classifications and Associated Fees

Retail License Classifications	Retailer License Fees
Class I	\$15
Class II	\$25
Class III	\$35
Class IV	\$50
Class V	\$75

There is no readily apparent explanation for why there are two different criteria used to determine licensing fees for wholesalers and retailers. Therefore, in order to streamline licenses to sell eggs in Colorado, the General Assembly should eliminate wholesaler and retailer licenses and create a single “dealer” license, which would encompass any person regardless of whether he or she is a wholesaler, retailer or producer, who sells eggs in Colorado, unless exempted by the CEL.

Implementing a “dealer” license would eliminate the two different criteria (gross annual sales and cases of eggs sold per calendar year) currently used in determining licensing fees. Instead, one uniform criterion should be created, which should be based on the number of cases of eggs sold per calendar year. Since the CEL specifically relates to the regulation of eggs, it is appropriate to tie the fee schedule to the number of cases of eggs sold in a calendar year. The greater number of eggs sold would correlate into a higher licensing fee paid to the CDA.

The creation of one “dealer” license would necessitate several conforming amendments to the CEL. For example, section 35-21-101(12), C.R.S., provides a definition of gross sales for the establishment of the licensing fees for retailers. The definition should be eliminated due to the fact that gross sales would no longer be utilized to determine licensing fees.

Section 35-21-101(19), C.R.S., provides a definition of a wholesaler. This definition is no longer necessary with the implementation of the “dealer” license. Likewise, section 35-21-101(18), C.R.S., which outlines the definition of retailer, should be eliminated because the “dealer” license renders it obsolete.

Creating one “dealer” license in Colorado would streamline egg licenses and eliminate the two different criteria currently utilized in determining licensing fees. Doing so would utilize one criterion (number of cases of eggs sold in the previous calendar year).

Recommendation 3 - Remove the wholesaler and retailer licensing classifications from statute, and allow the Commissioner of Agriculture to establish a classification structure by rule.

Section 35-1-107(5)(a), C.R.S., authorizes the Commissioner of Agriculture (Commissioner) to establish classifications and sub-classifications for the CEL by rule. The current CEL licensing classifications for wholesalers and retailers are delineated in sections 35-21-104(4)(b), and 35-21-104(4)(a), C.R.S., respectively.

Because the Commissioner is authorized to establish classifications and sub-classifications by rule, the General Assembly should remove the CEL classifications from the statute. Doing so would allow the Commissioner flexibility to amend the classifications, if necessary, by rule instead of a statutory change, which is the current process. The Commissioner should establish a classification system by rule that includes the dealer license. The various classifications should be based on the number of cases of eggs sold per week in the previous calendar year.

Recommendation 4 – Require the CDA to conduct inspections on small egg producer facilities in order to facilitate small egg producers’ ability to obtain dealer licenses.

Currently, small egg producers, which are egg producers with less than 3,000 chickens, are permitted to sell their eggs only at their place of production. This means that a small egg producer is permitted to sell his or her eggs only on the premises on which the chickens and ultimately the eggs are physically located. If a small egg producer chooses to sell his or her eggs off the premises, (e.g., a farmers’ market), the Colorado Department of Public Health and Environment (CDPHE) requires that the producer be an approved source.

To be designated as an approved source by CDPHE, an egg producer must be inspected, on a quarterly basis, by the USDA. These inspections ensure, among other things, that egg production facilities adhere to the USDA’s health standards regarding proper refrigeration and facility sanitation.

However, the USDA exempts small egg producers from quarterly health inspections. Since USDA does not inspect small egg producers, CDPHE cannot designate them as approved sources. As a result, small egg producers cannot sell eggs off their premises.

Therefore, the only place a small egg producer may legally sell his or her eggs directly to consumers, is on the physical premises of the production facility. This means that small egg producers' ability to sell their eggs is restricted due to a hole in the administrative process. Additionally, consumers' ability to purchase eggs directly from producers is severely restricted.

To address this issue, the General Assembly should require the CDA to conduct inspections of small egg producer facilities, upon request, to ensure that small egg producers are following good manufacturing practices, which include maintaining clean and sanitary nesting areas. Completing, and passing, an inspection administered by the CDA would enable a small egg producer to obtain the approved source designation from the CDPHE.

Once a small egg producer satisfactorily completes an inspection, he or she may obtain a dealer license from the CDA. Upon securing a dealer license from the CDA, the small egg producer would be an approved source by the CDPHE. A small egg producer who secures a dealer license would be permitted to sell his or her eggs outside the production facility (off the physical premises), such as at farmers' markets.

It should be noted that small egg producers who choose to sell their eggs only on their premises should not be required to obtain a dealer license from the CDA, and therefore should not be required to complete an inspection administered by the CDA. This is the *status quo* concerning small egg producers in Colorado.

Requiring the CDA to conduct inspections on small egg producer facilities in order to obtain a dealer license, provides an avenue for small egg producers to obtain a dealer license in Colorado, which currently does not exist. Further, requiring the CDA to complete inspections on small egg producers who choose to sell their eggs off their premises, serves to provide protection to the consumer by ensuring that small egg production facilities are adhering to established health requirements.

Recommendation 5 – Repeal obsolete language.

The CEL contains obsolete language that should be repealed by the General Assembly.

- Section 35-21-101(1), C.R.S., defines the proper candling device to be used when candling eggs. Candling is the examination of the interior of an egg by the use of light. Currently, the CEL requires candling to be completed using a standard commercial candler; however, candling of eggs can be completed using any light as long the interior of an egg can be viewed. Therefore, requiring the use of a standard commercial candler for candling eggs is not necessary and should be repealed.

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- Section 35-21-101(4), C.R.S., defines a consignment receiver as any person receiving eggs from producers for the account of the first receiver. The consignment receiver definition should be removed from the CEL because it does not appear anywhere in the statute; therefore, it is not needed for the effective regulation of eggs.
 - Section 35-21-101(10), C.R.S., defines a first receiver as the first person who pays the producers for eggs. The definition is not used in the CEL due to the fact that the CDA does not regulate this transaction. Therefore, to update the current statute, the definition should be removed from the CEL.
 - Section 35-21-101(11), C.R.S., defines frozen eggs as egg meats in solid frozen state, in whole, yolks, whites or any mixture thereof or in combination with other edible products. Egg products, including frozen eggs, are currently regulated by the United States Food and Drug Administration (FDA), not the CDA. Under the CEL, the CDA regulates only shell eggs; therefore, the definition of frozen eggs is not necessary for the enforcement of the CEL and should be removed from statute.
 - Section 35-21-102(1), C.R.S., requires all eggs sold in Colorado to be edible, candled and graded except eggs that are consigned from the producer of the eggs directly to a first receiver for candling and grading. The CDA does not regulate a first receiver transaction; therefore, it should be removed from the CEL.
 - Section 35-21-102(3), C.R.S., authorizes the CDA to inspect all frozen eggs, egg solids or any egg products imported into Colorado. The term “egg products” refers to eggs that are removed from their shells for processing.⁵⁰ The processing of egg products includes: breaking eggs, filtering, mixing, stabilizing, blending, pasteurizing, cooling, freezing or drying, and packaging.⁵¹

Section 35-21-102(3), C.R.S., also requires Colorado to use the regulations adopted by the USDA concerning the grading and inspection of frozen eggs, egg solids or any egg products. The language is unnecessary and should be removed from statute because the egg products outlined in this section are regulated by the Food Safety Inspection Services, which is the public health agency within the USDA, and the FDA, not the CDA. The CDA does not regulate egg products; it only regulates eggs that are in the shell.

⁵⁰ United States Department of Agriculture. Food and Safety Inspection Service. *Egg Products and Food Safety*. Retrieved on September 2, 2008, from http://www.fsis.usda.gov/factsheets/Egg_Products_and_Food_Safety/index.asp

⁵¹ United States Department of Agriculture. Food and Safety Inspection Service. *Egg Products and Food Safety*. Retrieved on September 2, 2008, from http://www.fsis.usda.gov/factsheets/Egg_Products_and_Food_Safety/index.asp

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- Section 35-21-103(2), C.R.S., requires all eggs for sale to be kept under adequate refrigeration from the time they are first received from the producer until sold to the consumer. Eggs should be properly refrigerated at the production site and through distribution; therefore, the reference that adequate “refrigeration from the time eggs are first received from the producer” should be removed from statute. Doing so will require eggs to be properly refrigerated at the production site until the eggs are sold to the consumer.

Section 35-21-103(2), C.R.S., also requires eggs to be refrigerated at temperatures established in rule by the Agricultural Commission (Commission). The Commissioner is authorized to adopt all reasonable rules for the implementation of the CEL, as outlined in section 35-1-107(5), C.R.S. Therefore, section 35-21-103(2), C.R.S., should be amended to replace “Commission” with “Commissioner.”

- Section 35-21-104(4)(e), C.R.S., requires any person operating retail delivery trucks, and selling eggs to consumers from those trucks, to obtain a retailer license for every truck used. The language is obsolete because eggs are no longer sold to consumers from trucks.
- Section 35-21-103, C.R.S., states that eggs for sale are required to be candled, graded and sorted into weight classes. This section of the CEL should be repealed because section 35-21-102, C.R.S., requires all eggs sold in Colorado to be candled, graded into Colorado consumer grades and weight classes. Therefore, section 35-21-103, C.R.S., is repetitive and no longer necessary for the effective enforcement of the CEL.

Recommendation 6 – Expand the sanitation and temperature requirements for vehicles used to transport eggs to include all stages of the delivery process.

Presently, section 35-21-103(3), C.R.S., requires every vehicle used to transport eggs from a producer to a dealer, processing plant or a retailer to be maintained in a sanitary condition and be enclosed to protect eggs from extreme heat or cold.

However, vehicles used to transport eggs from a dealer to a processing plant, manufacturer, restaurant, institution or another dealer are not required to follow the same requirements. The absence of these requirements could compromise public protection because eggs may become contaminated in unsanitary conditions, causing illness among consumers.

Also, these vehicles are not required to protect eggs from extreme heat or freezing, which could compromise the quality of eggs purchased by consumers.

In order to ensure an adequate level of consumer protection, the General Assembly should require all vehicles used for the transportation of eggs to be sanitary. Doing so will create uniform criteria that applies to all vehicles transporting eggs at every stage of the delivery process, which would ultimately serve to heighten consumer protection.

The General Assembly should also require all vehicles used in the transportation and distribution of eggs in Colorado to protect eggs from extreme heat and freezing. Implementing this requirement will enhance consumer protection by adding enhanced protection to the quality of eggs.

Recommendation 7 - Authorize the Commissioner to establish, by rule, license renewal dates.

Currently, section 35-21-104(1), C.R.S., requires every person who sells eggs in Colorado to renew his or her license on or before July 1 of each year for each place business is conducted. The CDA issues approximately 27,000 licenses each year for nine different programs, including wholesaler and retailer egg licenses. The CDA issues approximately 2,600 wholesaler and retailer licenses annually, which accounts for slightly more than 10 percent of the total licenses issued by the CDA in fiscal year 06-07.

In an attempt to streamline the process for obtaining a license to sell eggs in Colorado, the CDA is in the process of creating a centralized licensing program that would allow a person to renew his or her license(s) *via* an online registration system.

To achieve this goal, the CDA needs the flexibility to correlate the renewal periods for each of the nine programs. Removing the licensing renewal requirement of July 1 of each year would enable the Commissioner to establish a uniform renewal period for all of the programs within the CDA, thus creating a uniform licensing system and increasing efficiency and customer service.

Recommendation 8 - Authorize the Commissioner to request additional information for the completion of a licensing application by rule.

Section 35-21-104(3), C.R.S., requires the completion of an application in order to obtain a license (either wholesaler or retailer) to sell eggs in Colorado. An application must include the following information:

- Name of applicant;
- If the applicant is a firm, the names of its members;
- If the applicant is a corporation, the names of its officers;
- The location of the business; and
- The telephone number, if any.

The current statute does not allow the Commissioner the flexibility to request additional information related to contact or ownership information on a licensing application. As technology continues to evolve, the Commissioner needs the flexibility to amend the information necessary for a comprehensive application. For example, the information required in an application does not include an email address; including the email address in the application would require a change in the statute.

Instead, to improve efficiency in amending information required for an egg license application in Colorado, the General Assembly should add a provision in section 35-21-104(3), C.R.S., that allows the Commissioner to request any other additional contact or ownership information by rule. Doing so would enable the Commissioner to add, delete or change the information required in an application by rule rather than a statutory change.

Recommendation 9 – Shift rulemaking authority from the Commission to the Commissioner concerning the CEL, and expand the rulemaking authority of the Commissioner to include transporting and processing eggs.

The Agricultural Commission (Commission) consists of nine members who are appointed by the Governor and confirmed by the senate. The Commission is charged with making recommendations to the Commissioner concerning agricultural issues, developing general policies for managing the CDA and monitoring the CDA's budget. Currently, section 35-21-106(1), C.R.S., states that the Commission is authorized to formulate rules concerning the labeling, sale, storage, inspection and record-keeping of eggs.

However, the Commissioner is authorized to enforce the CEL. The current duties for the Commissioner include, but are not limited to:

- Enforcing the labeling requirements for eggs;
- Imposing discipline on licensees for violations of the CEL; and
- Enforcing stop sale notices on eggs.

As mentioned above, section 35-21-106(1), C.R.S., authorizes the Commission to formulate rules concerning eggs. This is inconsistent with the remainder of the statute, which designates the Commissioner with the authority over all of the other duties and responsibilities concerning the CEL. Authorizing the Commission to formulate rules is also inconsistent with other agricultural statutes.

Therefore, the General Assembly should update section 35-21-106(1), C.R.S., by shifting rulemaking authority from the Commission to the Commissioner. This shift in rulemaking authority for the CEL would assist in providing consistency within the agriculture statutes. The rulemaking authority for the Commissioner is located in section 35-1-107(5), C.R.S., which authorizes the Commissioner to adopt reasonable rules for the implementation of the CEL.

Currently, the CEL does not expressly state that the Commissioner has rulemaking authority concerning the transportation of eggs. The absence of clear rulemaking authority could potentially compromise public protection. Therefore, the General Assembly should expand the Commissioner's authority to formulate rules to include transporting eggs. Adding this authority would enable the Commissioner to proactively adopt or amend rules for the effective enforcement of the regulation of eggs in Colorado.

Also, the General Assembly should amend the CEL to grant the Commissioner rulemaking authority concerning the processing of eggs. Granting this authority would serve to establish standards for producers who have less than 3,000 chickens and are exempt from USDA inspections. Establishing rules related to the processing of eggs would provide an added level of protection to the consumer by ensuring that small egg producers have guidelines in place for the proper sanitation and refrigeration of eggs.

Recommendation 10 – Expand the Commissioner's authority to enforce the CEL by including access to vehicles used to transport eggs.

Section 35-21-106(2)(a), C.R.S., enables the Commissioner to access businesses that sell eggs as well as the records pertaining to the business in order to enforce the CEL. However, the Commissioner's authority does not extend to vehicles used to transport eggs. Without explicit authority to access vehicles used to transport eggs, it is unclear whether the Commissioner has the authority to inspect these vehicles to ensure compliance with the CEL and the corresponding rules.

In order to provide heightened consumer protection, the General Assembly should amend section 35-21-106(2)(a), C.R.S., to expand the Commissioner's access to include vehicles used to transport eggs. Doing so would allow the Commissioner to more effectively enforce the CEL.

Recommendation 11 – Allow the Commissioner to establish a late fee for the late renewal of licenses.

Currently, wholesalers and retailers who possess a license to sell eggs in Colorado are not assessed a late fee if they fail to renew their annual license through the CDA. According to CDA staff, approximately 40 percent of licensees in Colorado fail to renew their license on time. This presents challenges for CDA staff in terms of the collection of fees, which could compromise the ability of the CDA staff to effectively enforce the CEL.

Because the CDA does not have the statutory authority to issue fines for licensees who fail to renew their licenses by the required due date, the CDA can only assess a fine *via* the issuance of a civil penalty, which requires written notice and an opportunity for a hearing as outlined in Colorado's Administrative Procedures Act. This process is both time consuming and expensive for the CDA. The implementation of a late fee will allow the CDA to more effectively enforce the annual egg license renewal requirement by enabling the CDA to assess late fees on persons who renew their licenses late.

Administrative Recommendation 1 – Post current rules related to the CEL on the CDA website.

Currently, the rules related to the CEL are not available to the public or wholesalers or retailers *via* the CDA website. The absence of the rules on the CDA website presents a potential barrier to both consumers and licensees in obtaining the most current rules related to the CEL.

The rules are an important component for the effective regulation of the egg industry in Colorado. For example, the rules outline the information required to be included on every case, carton or container of eggs sold to consumers. Limiting access to the current rules could compromise a licensee's ability to provide complete information on each case, carton or container of eggs in accordance with the requirements outlined in rule.

The CDA website is a useful and convenient resource for information concerning the egg industry in Colorado. Therefore, providing the rules on the CDA website would serve as an additional resource for both consumers and licensees, and would foster an environment that improves access to information. Improving accessibility could potentially increase the individuals who have knowledge of the regulation of the egg industry in Colorado.

In sum, posting current rules related to the CEL offers an additional venue for both the public and licensees to easily access information related to the regulation of eggs in Colorado. The rules exist to protect the public, but if consumers and licensees cannot access them, public protection is potentially jeopardized. Therefore, the CDA should post the current rules related to the CEL on its website.

Appendix A – Summary of U.S. Standards for Quality of Eggs

SPECIFICATIONS FOR EACH QUALITY FACTOR			
Quality Factor	AA Quality	A Quality	B Quality
Shell	Clean Unbroken. Practically Normal.	Clean Unbroken. Practically Normal.	Clean to slightly stained.* Unbroken. Abnormal.
Air Cell	1/8 inch or less in depth. Unlimited movement and free or bubbly.	3/16 inch or less in depth. Unlimited movement and free or bubbly.	Over 3/16 inch in depth. Unlimited movement and free or bubbly.
White	Clear. Firm.	Clear. Reasonably firm.	Weak and watery. Small blood and meat spots present.**
Yolk	Outline slightly defined. Practically free from defects.	Outline fairly well defined. Practically free from defects.	Outline plainly visible. Enlarged and flattened. Clearly visible germ development but no blood. Other serious defects.

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

Appendix B – Sample Size for Initial Screening of Egg Lots

<u>Dozens in Lot</u>	<u>Number of 100 Egg Samples</u>
Less than 4 doz.	All Eggs
5-29 doz.	50 eggs
30-300 doz.	1
330-1500	2
1,530-3,000	3
3,030-6,000	4
6,030-9,000	6
9,030-12,000	7
12,030-18,000	8