

SUNSET REVIEW

OF

SLAUGHTER, PROCESSING AND SALE

OF MEAT ANIMALS ACT

Submitted by
The Colorado Department of Regulatory Agencies
Office of Policy & Research
June 1994

July 27, 1994

The Honorable Vickie Agler, Chair
Joint Legislative Sunrise/Sunset Review Committee
State Capitol Building
Denver, CO 80203

Dear Representative Agler:

The Colorado Department of Regulatory Agencies has completed the evaluation of the Slaughter, Processing and Sale of Meat Animals Act. We are pleased to submit this written report, which will be the basis for my office's oral testimony before the Joint Legislative Sunrise/Sunset Review Committee. The report is submitted pursuant to Section 24-34-104 (8)(a), of the Colorado Revised Statutes, which states in part:

"The Department of Regulatory Agencies shall conduct a 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 such supporting materials as may be requested, to the Sunrise and Sunset Review Committee created by joint rule of the Senate and House of Representatives, no later than July 1 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 division and staff in carrying out the intention of the statutes and makes recommendations for statutory and administrative changes in the event this regulatory program is continued by the General Assembly.

Sincerely,

Joseph A. Garcia
Executive Director

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EXECUTIVE SUMMARY

The Department of Regulatory Agencies, Office of Policy and Research, has conducted its Sunset Review of the licensing functions of the Colorado Department of Agriculture (hereinafter "the Department") pursuant to the Slaughter, Processing and Sale of Meat Animals Act. The Department recommends that licensing continue for food plan operators, meat processors, and locker plants.

Continuing the licensing programs are necessary to protect consumers from fraudulent business practices and to ensure that businesses who serve the public use hygienic and sanitary procedures. Licensing allows the Department to investigate applicants and exclude operators who have a history of defrauding consumers, to investigate current instances of fraud and take action on them, and to regulate businesses that can endanger the public health.

OPR recommends that the state agricultural commission be given authority to promulgate regulations governing the sale of meat and other regulated products. Currently, they do not have that authority. OPR also recommends that the commission be given the authority to set license fees in regulations rather than having them set in statute. The revenue generated from the license fees should reflect direct and indirect costs of operating the programs.

This report will make recommendations to improve the statute by repealing certain sections and suggest that they be placed in regulation. For example, the statute requires that rabbits be frozen at a temperature of forty degrees Fahrenheit or less. The Department should have the ability to change such technical requirements as accepted practices and knowledge changes.

This report will also recommend that a definition for "adulteration/adulterated" be added to the statute. Furthermore, it should be a violation of the statute to sell adulterated meat and other regulated products. This is necessary to protect the public health and to prevent consumer fraud.

BACKGROUND

THE SUNSET PROCESS

The issuance of licenses relating to slaughter, processing, and sale of meat animals through the Colorado Department of Agriculture in accordance with Article 33 of Title 35, C.R.S. shall terminate on July 1, 1995 unless continued by the General Assembly § 24-34-104(24.1)(c). During the year prior to this date, it is the duty of the Department of Regulatory Agencies to conduct an analysis and evaluation of the licensing of slaughter, processing, and sale of meat animals pursuant to § 35-33-407, C.R.S.

During this review the Department of Agriculture (hereinafter "the Department") must demonstrate that there is still a need for licensure pursuant to this Act and the Act is the least restrictive consistent with the public interest. The Department's findings and recommendations are submitted to the Sunrise and Sunset Review Committee of the General Assembly. (Statutory criteria used in Sunset Reviews may be found in Appendix A of this report.)

The Sunset Review process includes an analysis of the statute, and interviews with State licensing authorities, staff, industry representatives and local government officials. The Department makes every effort to elicit information and comment from all interested parties.

COLORADO

This statute was previously known as the Frozen Food Provisioner's Law. It licensed food plan operators, locker plants, and processing facilities with respect to cutting, preparing, wrapping, and packaging meat and meat products intended for storage in lockers, home freezers, and freezer units.

The statute was repealed and reenacted with amendments in 1989. At that time the statute was divided into four parts. These parts are: (1) General Provisions, (2) Construction and Operation of Processing Facilities, (3) Advertising and Sale, and (4) Licenses - Fees - Penalties.

In response to complaints from hunters about the lack of sanitation in some game processing plants, the Department, at the request of the Colorado Division of Wildlife, amended the definition of "Meat or meat product" to include large game animals. Currently, the meat inspection program licenses and inspects meat processors, food plan sales operators, and locker plants. They also inspect for unsanitary or fraudulent practices in custom meat processing and meat sales.

This program is administered in the Technical Services Section of the Inspection and Consumer Services Division. The section utilizes a multiple-inspection program and is responsible for all field inspections, testing, and/or sampling for the Measurement Standards (small devices), Meat Inspection, Eggs, Feed, and Fertilizer programs. Each inspector in the section has been trained and performs inspections in all six program areas.

(See Appendix C for a map showing the inspectors' territories)

There are three types of meat processors in Colorado:

1. One type are the large packers that buys livestock, slaughters the animals, processes the meat and sells it to retailers. The meat that is to be sold undergoes federal meat inspection. These large packers may buy cattle from ranchers within Colorado or import them. There is a full-time federal inspector on site at all times.
2. The second type of establishment has a federal inspector on site when it does federal slaughtering and processing. The federal inspector only looks at the carcasses that are for retail sale. The state licenses and inspects the plant's sanitation procedures because the plant does custom processing. Custom processing means the meat is for the consumption of the owner of the animal killed.
3. The third type of business is only inspected by the state and does only custom processing. Game processors are examples of exclusively state licensed and inspected processors.

Hunting is an important industry in Colorado, especially in small western slope communities. Last year, the Colorado Division of Wildlife received \$40,416,163.00 from the sale of hunting licenses. Game processors accommodate hunters who need their animal butchered and prepared. This statute helps ensure hunters are treated fairly and receive satisfactory service from these businesses. The agricultural multi-inspector is in the facility to inspect the scale, at the same time, he also looks to see if the business is complying with the meat processing statute.

Rarely is a custom processor just a processor. He usually has a locker plant too. A locker plant provides locker service for the cold storage of frozen meats, fruits, and vegetables. Lockers are rented principally to farmers and other individuals for the purpose of storing goods for their own personal or family use. If a facility is both a locker plant and a meat processing establishment, it only has to obtain one license. It does not have to pay for two licenses.

LICENSES - VIOLATIONS - ACTIONS

	92/93	91/92	90/91	89/90	88/89
LICENSES	158	127	169	148	136
VIOLATIONS	409	325	366	200	311
CEASE & DESISTS	7	20	25	10	*0
ACTIONS ON LICENSES	2	1	0	3	**0

* New Authority

** New Law

- Approximately 40 of the 158 licenses belong to food plan operators.
- There are approximately 100 complaints and inquiries per year about food plan operators: Door-to-Door Sales.
- Most of the violations are for sanitary violations against processors.
- The cease and desist orders were against unlicensed food plan operators.
- The actions on a license are against food plan operators.

FEDERAL

The Federal Meat Inspection Act 21 U.S.C.A. § 601-695 was enacted in 1907. It regulates slaughtering, processing, and packing establishments for meat and meat products which are in foreign and interstate commerce. The federal statute governs, among other things, sanitation of the facilities, examination of the carcasses, and labeling of meat. However, personal slaughtering and custom slaughtering are exempt from federal inspection. Even though they are exempt from federal inspection, to remain exempt, the personal/custom meat must be separated at all times from other meat, and it must be clearly marked "Not for sale." Therefore, federal inspectors will inspect a custom processor to ensure compliance

with these requirements. This means that there are occasional overlaps between federal and state inspections.

However, the U.S.D.A. inspection is not as comprehensive as the Department's. The federal inspector only looks to see if the custom meat is separated from the other meat and if it has "Not for sale" stamped on it. The Department's inspector looks for compliance with those regulations, plus he looks for compliance with state sanitation and record keeping regulations.

The federal statute and the state statute allows the U.S.D.A. and the Department to fashion a cooperative agreement to avoid duplicating efforts. The Department has approached the U.S.D.A. to negotiate an agreement similar to the "shell egg surveillance" program the Department now has with the U.S.D.A. The U.S.D.A. has directed its regional office to do what is necessary to get such a program in place; however, at this time, the U.S.D.A. has not created such a program.

Other Colorado Statutes

Food plan operators, meat processors, and locker plants are also regulated by the provisions of some other Colorado statutes.

1. Colorado Consumer Protection Act, § 6-1-105(n), C.R.S.

The Consumer Protection Act addresses some problems that the Department had been having with some businesses who were operating "bait and switch" meat shops. The Act considers this a deceptive trade practice. Section 6-1-105(1)(n), declares that a person engages in a deceptive trade practice when, in the course of such person's business, vocation, or occupation, such person employs, among other things:

- "Bait and switch" advertising;
- Refuses to show the goods or property advertised;
- Requiring tie-in sales or other undisclosed conditions to be met prior to selling the advertised goods, property, or services;
- Accepting a deposit for the goods, property, or services and subsequently switching the purchase order to higher-priced goods, property, or services; or
- Failure to make deliveries of the goods, property, or services within a reasonable time or to make a refund therefore; . . .

2. Slaughterers, § 12-11-101 et seq., C.R.S.

Those processors who slaughter livestock may also fall under the provisions of title 12 of Article 11. This statute exists to prevent livestock theft by making it illegal to slaughter livestock unless the provisions of the law have been complied with by the slaughterer. If a business is licensed pursuant to the "Slaughterers" statute, it is exempt from obtaining a license under the "Slaughter, Processing, and Sale of Meat Animals Act." It must still comply with the other provisions of the statute, but it does not have to pay for two licenses.

The Slaughterer statute only addresses ownership of livestock. It regulates what must be done with the hides from slaughtered animals, and what records a slaughtering business must keep. The statute does not address sanitation of facilities or of the meat. The state board of stock inspection commissioners administers this licensing program.

3. Disease Control - Sanitary Regulations, § 25-4-101-111, C.R.S.

Meat processors are also governed by this statute which is a general sanitation law enforced by the Department of Health. No license is required under this statute, and although it has the power to do so, the health department does not regularly inspect these establishments. They may inspect if they have a complaint. It is questionable as to whether the several departments of health across Colorado have the staffing to do regular inspections of these establishments. The sanitary regulations under the Slaughter, Processing, and Sale of Meat Animals Act is no more restrictive than the department of health's regulations.

SUMMARY OF STATUTE AND RULES

Who Must Be Licensed

1. Food plan operators;
2. Locker plants;
3. Meat processing facilities.

A food plan operator is any person, firm, or corporation, other than a processor or a locker plant operator, who is engaged in the business of soliciting, negotiating, or making sales of food plans. A food plan means soliciting, negotiating, or making sales of meat or meat products and frozen foods to consumers, which products are sold or delivered as a package or to be delivered over a specified time. A food plan includes the sale, lease, or rental of any freezer unit in conjunction with the sale of food.

A locker plant is statutorily defined as an establishment in which individual lockers are rented for the storage of food at or below a temperature of forty degrees Fahrenheit.

A meat processing facility is an establishment where meat is slaughtered, dressed, processed, cut, trimmed, wrapped, or packaged for delivery to consumers.

Exemptions to licensing

The following persons do not have to obtain a license under this statute:

1. Any person licensed and bonded under the "Slaughterer" statute;
2. A retail grocery store in which seventy-five percent or more of the business results from retail sales of products other than bulk meat;
3. Any person who has an establishment number from the U.S.D.A. and does not sell meat or meat products retail or engage in custom processing;
4. Any religious practice involving the ritual slaughter, handling, or preparation of meat animals. However, the method of slaughter must be humane as defined in statute.

License Fees

These license fees generate revenue that is transmitted into the General Fund. The current fees were set in 1971. Prior to 1971, the fee for each license was \$25.00.

Locker Plants -	\$ 50.00 per year
Meat Processors -	\$ 50.00 per year
Food Plan Operators -	\$100.00 per year

Inspection

All facilities and establishments for whom an application for license has been made must be inspected before the license is issued. They must also be inspected before its license is renewed. This inspection helps ensure that the establishment complies with the provisions of this statute and the rules and regulations established.

Bonding

Food plan operators must file a surety bond or irrevocable letter of credit in order to get a license, or in order to reinstate a license that had been revoked. Each food plan operator must furnish a bond for each salesperson employed. The Department looks at the stability of the company when it sets the amount of the bond, but it cannot exceed fifty thousand dollars. The licensee may have to furnish additional evidence of financial responsibility or a new bond if there is an action filed against the bond. There has been 1 claim against a bond in the last four years; however, the Department uses the bond, and the threat of taking action against the bond, in order to get the offending company to negotiate with the consumers they had cheated. The company is willing to pay unsatisfied customers out of their own pocket rather than have a claim filed against its bond.

Enforcement

The heart of a regulatory program is the ability of the state to discipline violators of the act. The Department has the authority to deny, suspend, revoke, restrict, refuse to review, or place on probation the license of any applicant or licensee who:

makes a false statement or misrepresentation on his application for a license or renewal;

has had a license or its equivalent authorization to engage in activities regulated under this statute revoked, suspended, or denied by another state;

has violated any provision of this statute;

has allowed his bond or other security to expire, lapse, or be canceled. If this happens, the licensee has ten days to furnish new security;

fails to obey any lawful order of the commissioner.

The Department has the authority to assess civil penalties and to pursue criminal prosecution. The civil penalty may not exceed \$750.00 per violation for each day of violation. The assessment is at the discretion of the Department, but it is subject to judicial review at the request of the person charged. Any penalty assessed may be collected by the Department in an action instituted in any court of competent jurisdiction. Any penalty collected is transmitted to the general fund. Any violation of this statute or any rule or regulation constitutes a class 2 misdemeanor. Punishment is as provided in § 18-1-106.

Minimum sentence

Three months imprisonment, or two hundred fifty dollars fine, or both.

Maximum sentence

Twelve months imprisonment, or one thousand dollars fine, or both.

Licensing, and the authority to restrict, revoke, deny, suspend, or place on probation is an important tool with which the Department regulates fraudulent door-to-door food plan operators. The Department may take action against the licensee in order to control improper behavior by licensees (mostly door-to-door meat peddlers). They may restrict the conduct of a licensee, or reach a stipulation with the licensee about how he may conduct business.

SUNSET ANALYSIS

The purpose of the Slaughter, Processing and Sale of Meat Animals Act is to protect consumers from fraudulent business practices, and to protect the public health by requiring establishments that rent locker space and custom process meat to conduct its operation in a clean and sanitary manner.

POTENTIAL PUBLIC HARM

Fraudulent Sales Practices

Dishonest food plan operators who defraud consumers are a significant problem with which the Department must confront. The Department responds to approximately 100 complaints and inquiries each year. They believe that only a small number of those who are defrauded actually lodge a complaint with the Department. (See chart on page 3)

Unscrupulous door-to-door salesmen prey on unsuspecting people and sell them poor quality meat and other frozen food at inflated prices. These businesses concentrate their efforts in neighborhoods where there are larger percentages of unsophisticated consumers, such as trailer parks, the area around military bases, and low income neighborhoods, although, they also hit the more affluent neighborhoods.

An example of the sales pitch these people use is, "We'll sell you 19 steaks for \$65.00." "We have a special going on right now and if you buy a certain amount of meat, we will give you a box of frozen vegetables for free." They do not mention how much these products weigh or how much they cost per pound. The 19 steaks could be 4 ounces each. The value of the box of vegetables might be one dollar. Under the current statute, these salesmen do not have to quote any prices on a per pound basis.

The only people who must quote prices per pound are those who sell "bulk meat," which is statutorily defined as whole carcasses, sides, or primal cuts (the larger portions of meat). This provision governs businesses who might employ bait and switch tactics, but it does not address food plan operators who sell meat in smaller portions such as individual steaks. Most of the complaints and inquiries the Department addresses are about food plan operators.

In order to address this problem in the statute, § 35-33-302(3) should be changed to include products sold by food plan operators. If the prices of all "regulated products," as defined in the statute, must be quoted per pound, then the statute would cover food plan operators. Furthermore, § 35-33-104 should be amended to authorize the Department to promulgate rules and regulations concerning the sale of meat and other regulated products in order to address the problems that food plan operators create.

Unsanitary Processing

"*Salmonella* and *Campylobacter jejuni* are generally regarded as posing the major microbiologic risks associated with meat and poultry. . . . Recent concern has also focused on contamination of meat by . . . *Escherichia coli* (more commonly known as E-coli)."❶ This disease causes hemorrhagic colitis and, in severe cases, hemolytic-uremic syndrome. ❷ Therefore, "it is essential that all meat-processing operations, whether slaughtering, cutting or other processing, be carried out in a clean area and, as much as possible, that the products be protected from contamination from all sources. When meat-processing operations are carried out within a facility specifically built and maintained for meat processing, sources of contamination can be much more easily and adequately controlled." ❸

The Department should continue to regulate locker plants and meat processing facilities in order to protect the public health. The Department is the only governmental agency regularly inspecting custom processing and locker plant facilities. The Colorado Department of Health has the authority to inspect, but they are not required to do so, neither do they have the staffing to inspect these facilities on a regular basis. The federal government may inspect the carcasses in some of the state licensed facilities, but they do not do sanitary inspections. Therefore, the Department is the only agency that verifies compliance with hygienic and sanitary procedures. (See chart on page 3)

Adulterated Meat

Besides microbiological bacteria, other substances injurious to consumer health may contaminate meat and meat products and harm consumers. Foreign substances, such as toxic substances and excessive fat, may be introduced into meat thereby deceiving the consumer as to what he is buying.

For example, in 1991 - 1992, the Meat Inspection program devoted a considerable amount of time working with the Colorado Food Services Council, the Division of State Purchasing, and the City of Denver to determine the level of need to develop a program to protect government agencies from fraud by meat vendors. They discovered a significant problem with some federally inspected meat vendors. These vendors were selling state governmental agencies adulterated meat. These agencies were not getting what they were paying for.

These meat vendors were exempt from regulation under this statute because they held USDA Establishment Numbers. The federal inspectors warned the vendors that they were violating federal standards. In fact, they warned them several times; however, the federal law does not have strong enforcement mechanisms. Therefore, the federal inspectors notified the Department to see if they could do anything to stop the sale of the adulterated meat. The only problem was that these meat vendors were not violating the current state statute, because they are exempt from state regulation. It is against the statute to sell diseased meat, § 35-33-204, but it is not a violation of the statute to sell adulterated meat. The only recourse the government agencies had was to pursue the vendors for breach of contract, but they chose not to pursue this remedy. This inspection survey conducted by the Department demonstrated that the statute did not protect either governmental agencies or the average consumer from receiving adulterated meat or meat products from food plan operators or custom processors.

One could argue that this is a deceptive trade practice as defined in the Colorado Consumer Protection Act, § 6-1-105, and therefore, there is already a remedy in statute, but that might be difficult to prove, however, since it is not specifically stated. It would be more efficient for the Department to enforce against this problem. It should be a violation of the statute to sell adulterated meat or meat products. Any violation could be handled by the Department, and if necessary they could file criminal charges under the Colorado Consumer Protection Act. But that would not always be necessary if the Department is given authority to deal with these problems. A definition of "adulterated/adulteration" would need to be added to the statute along with prohibiting the sale of such items.
(See Appendix D for definition of adulterated)

License Fees

Colorado's general agriculture act requires the Department to "[a]nnually fix such inspection and license fees and service charges within maximum limits provided by law as may be necessary to pay the cost of service performed and reasonable reserves for contingencies, including cost of depository, account, disbursement, auditing, and rental of quarters and facilities furnished by the state; . . ." § 35-1-104(1)(e), C.R.S..

Although all license fees collected by the licensing program are deposited into the state General Fund, and the program is funded through the General Fund, it was clearly the intent of the legislature that license fees should at least pay for the operational costs of agricultural programs. According to the Department, the amount of revenue the fees generate do not pay for the actual costs of the services they perform. Furthermore, the Department has antiquated data gathering and reporting capabilities and needs to upgrade the support systems for this program in order to operate it more effectively.

The last time most of the license fees were changed was in 1971, over twenty years ago.

RECOMMENDATIONS

RECOMMENDATION 1: CONTINUE LICENSING FOOD PLAN OPERATORS, MEAT PROCESSORS, AND LOCKER PLANTS THROUGH THE DEPARTMENT OF AGRICULTURE.

A sunset review looks to see if a licensing program is necessary to protect the public from both health and economic harm. Licensing and inspecting meat processing/locker plant facilities are necessary (1) to ensure that proper sanitary and health procedures are used when preparing a consumer's meat, and (2) to protect the consumer from fraudulent practices of the processor while preparing his meat.

Licensing, and the authority to restrict, revoke, deny, suspend, or place on probation is an important tool with which the Department regulates fraudulent door-to-door food plan operators. There are less food plan operator licensees than either meat processors or locker plants; however, they create most of the problems the Department must confront.

For example, last year the Department found several unlicensed businesses and brought them into compliance. They also denied to issue licenses to two fraudulent door-to-door meat peddlers, thus protecting consumers from economic harm. Additional examples are in the sunset analysis section of this report.

RECOMMENDATION 2: AMEND THE "POWERS AND DUTIES" SECTION OF § 35-33-104 TO AUTHORIZE THE DEPARTMENT TO PROMULGATE RULES AND REGULATIONS GOVERNING THE SALE OF MEAT ANIMALS.

Currently, the Department only has authority to formulate reasonable rules, regulations, and standards regarding the construction, operation, and sanitation for **meat processing facilities** and **locker plants**. The statute does not give the Department any authority to promulgate rules and regulations governing the **sale** of meat or food plan operators.

This is a serious flaw in the statute. Fraudulent door-to-door food peddlers are a problem that the Department spends a great deal of its resources trying to control, yet they do not have the authority to promulgate regulations to help them address this problem. Statutes set out the general guidelines and mandates of the legislature, but an agency needs the authority to enact rules and regulations necessary to enforce and administer those mandates.

RECOMMENDATION 3: REPEAL §§ 35-33-103(18) AND 35-33-201(7) TO REMOVE THE EXACT TEMPERATURE REQUIREMENT OF FORTY DEGREES FAHRENHEIT OR LESS, AND PLACE IT IN REGULATION.

The language of these sections of the statute should be more general. The definitions may be changed to the following:

§ 35-33-103(18) - "Locker plant" means a location or establishment in which space in individual lockers is rented for the storage of frozen food.

§ 35-33-201(7) - All poultry and rabbits shall be chilled immediately after processing so that the internal temperature is reduced to such a degree as is consistent with public health practices. The actual temperature should not be in statute. Our current knowledge shows that forty degrees Fahrenheit or less is adequate to protect the public; however, should future scientific knowledge show that a lower degree is necessary, it should be within the Department's discretion to make necessary revisions through policy or regulation.

RECOMMENDATION 4 : AMEND § 35-33-204 OF THE STATUTE TO INCLUDE THE SALE OF ADULTERATED MEAT AS UNLAWFUL. ADD A DEFINITION FOR "ADULTERATE" OR "ADULTERATION" TO THE STATUTE.

Currently, it is only unlawful to sell diseased meat. It is not even a violation of the statute to sell adulterated meat. The Consumer Protection Act, § 6-1-105(1)(e) makes it illegal to "knowingly make a false representation as to the characteristics, ingredients, uses, benefits, alteration, or quantities of goods, food, services, or property or a false representation as to the sponsorship, approval, status, affiliation, or connection of a person therewith; . . ."

This might include adulterated meat because one would be making a false representation as to characteristics, ingredients, or alterations of food, but if that were the only statute that was violated, then the only remedy would be to file criminal charges.

If selling adulterated meat became a violation of the Slaughter, Processing and Sale of Meat Animals Act, the Department could assess civil penalties, file criminal charges, or both. Filing criminal charges under the Consumer Protection Act should not be the only option available to deal with this problem.

To implement this, OPR recommends adding the words "**or adulterated** " to § 35-33-204. The added provision will read:

Sale of diseased or adulterated meat. (1.5) Notwithstanding any other provision of this article, it is unlawful for any person to receive for the purpose of slaughter, sell, expose for sale, can or pack for the purposes of transportation or sale, or give away for use as human food, any meat which he knows or has reason to know is adulterated for the purpose of human consumption.

(2.5) Any person who violates this section commits a class 2 misdemeanor and shall be punished as provided in section 18-1-106, C.R.S.

Currently, there is no definition for adulterated/adulteration in the statute. If it becomes a violation of the statute to sell adulterated meat, the statute needs to define what that means. OPR recommends adopting by reference § 25-5-410 of Colorado's "Pure Food and Drug Law. See Appendix D for a copy of the definition.

RECOMMENDATION 5: REMOVE ALL LICENSING FEES FROM THE STATUTE AND GIVE THE DEPARTMENT OF AGRICULTURE COMMISSION AUTHORITY TO SET FEES.

All licensing fees are paid into the General Fund, unlike many regulatory programs which are cash funded. The amount for licenses are fixed in statute and have been listed earlier in this report. The last time these fees were changed was in 1971.

With the fee caps imposed by the statute the Department is not able to cover its costs, but it must still continue to perform its statutory duties. Therefore, the fees as set in the statute are not accomplishing their purpose.

It is an inefficient use of governmental resources to require legislation in order to adjust fees. The legislative process is a very time consuming and expensive process. It makes more sense to delegate the responsibility to set license fees to the Department of Agriculture Commission. The industry's concerns and interests are represented by the commission; therefore, the possibility of a fee "fiasco" is slight.

Furthermore, the commission meetings are open to the public and it must meet at least once every three months. This process affords any interested person the opportunity for input into any rules and regulations the commission establishes. It works as a check and balance against any inappropriate exercise of regulatory authority.

There would still be legislative oversight of the fees the Department collected and the cost of the program. Each year the Department must submit a budget to the Joint Budget Committee for approval. This budget process allows the Legislature to review the amount of the fees the Department sets.

ADMINISTRATIVE RECOMMENDATION: REQUIRE THE DEPARTMENT TO WRITE A COMPUTER SOFTWARE PROGRAM FOR THE INSPECTION AND FIELD SERVICES SECTION.

The Inspection and Field Services Section of the Department has a computer system that allows them to input a large amount of information. There is information about licenses and inspection results performed by field agents; however, this information cannot be used because the Department has not written a software program to retrieve this data in any meaningful form; therefore, they must extract and analyze the data by hand when a report is needed. In order to operate at an efficient level, the Department must be able to retrieve and analyze this information.

APPENDIX A

SUNSET STATUTORY EVALUATION CRITERIA

- I. Whether regulation by the agency is necessary to protect the public health, safety and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less or the same degree of regulation;
- II. If regulation is necessary, whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms and whether agency rules enhance the public interest and are within the scope of legislative intent;
- III. Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures and practices of the Department of Regulatory Agencies and any other circumstances, including budgetary, resource and personnel matters;
- IV. Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;
- V. Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates;
- VI. The economic impact of regulation and, if national economic information is available, whether the agency stimulates or restricts competition;
- VII. Whether complaint, investigation and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession;
- VIII. Whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action;
- IX. Whether administrative and statutory changes are necessary to improve agency operations to enhance public interest.

APPENDIX B - ORGANIZATIONAL INFORMATION

INSPECTION AND CONSUMER SERVICES (MULTI-INSPECTORS)

1	Agricultural Program Specialist V
2	Agricultural Program Specialist III
12	Agricultural Program Specialist II
3	Administrative Assistant IV
This Section Has 18 FTEs Assigned To It	

APPENDIX C - TERRITORIES FOR MULTI-INSPECTORS

APPENDIX D - DEFINITION FOR ADULTERATED

BIBLIOGRAPHY-ENDNOTES

- ❶ Food and Nutrition Board, Cattle Inspection: Committee on Evaluation of USDA Streamlined Inspection System for Cattle (SIS-C), (Washington, D.C.: National Academy Press, 1990), p. 42.
- ❷ *Ibid.*.
- ❸ Guidelines for slaughtering, meat cutting and further processing, FAO Animal Production and Health Paper (Food and Agriculture Organization of the United Nations: Rome, 1991), p. 5.