



Dora
Department of Regulatory Agencies

Office of Policy, Research and Regulatory Reform

2008 Sunset Review: Public Livestock Markets

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 regulation of public livestock markets. 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 55 of Title 35, C.R.S. The report also discusses the effectiveness of the State Board of Stock Inspection Commissioners and staff in carrying out the intent of the statute 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 Public Livestock Markets Act

Summary

What is Regulated?

Sale barns, sale rings, auction houses, stockyards, and any other public facilities where livestock is transported, consigned by its owner for sale, and licensed under section 35-55-101, *et seq.*, Colorado Revised Statutes, the Colorado Public Livestock Market Act.

Who is Regulated?

As of August 27, 2007, there were thirty five public livestock markets licensed by the Colorado Board of Stock Inspection Commissioners (Board), 45.7 percent of which sold livestock at least one day per week while the remainder operate less often and 25.7percent operated only one time per year.

Why is it Regulated?

Public Livestock Markets provide a venue to perform brand inspections, to determine title to equine, bovine, and alternative livestock, and veterinarian inspections, to determine if an animal is fit for sale and to prevent the spread of infectious and contagious disease.

How is it Regulated

The Division of Brand Inspection of the Colorado Department of Agriculture (CDA) regulates public livestock markets with three approaches:

- Fiduciary – demands that the market operator be able to qualify for a bond issued by the federal Packers & Stockyards Act and is indemnified for a minimum of \$25,000.
- Brand Identification – Inspectors identify all equine, bovine, and alternative livestock animals usually noting a registered brand.
- Health Inspection – Ensure that a CDA-approved veterinarian is at the facility every sale day to examine all animals presented for sale.

What Does it Cost

The Division of Brand Inspection administration portion of the program is cash funded by license and brand inspection fees. During fiscal year 06-07, the expenditures totaled \$512,154 and there were 9.6 full-time equivalent employees devoted to this program. Statute-mandated veterinarian inspections are performed by CDA Commissioner-approved veterinarians but paid for by the consignor of the animal(s).

What Disciplinary Activity is There?

Between fiscal years 02-03 and 06-07, disciplinary proceedings consisted of one letter of admonition written September 1, 2005.

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 regulation of public livestock markets for five years, until 2014.

The public livestock market is an important industry stop. It offers a place to market animals to multiple buyers at one time providing maximum exposure. It is also a place where state regulators perform two types of livestock animal inspections: brand inspections to verify title for equine, bovine, and alternative livestock animals prior to sale and veterinarian inspections to verify that each animal at the market is disease free and fit for sale.

Schedule the Board for sunset review.

Sunset review is standard practice for regulatory bodies. In Colorado, the Board has been authorized in statute since 1903 without undergoing a sunset review. While reviews have been conducted on Board functions, a holistic approach to system examination allows the General Assembly to weigh the interdependence of all the parts and see how they fit together. It is the way state government continually looks at itself and monitors its purpose.

The Department of Agriculture should develop an organization and plan to transfer the regulatory authority for public livestock markets from the State Board of Stock Inspection Commissioners to the Division of Animal Industry.

The worldwide, meat products marketplace in the 21st century is driven by the prospect of a clean, healthy food supply. Consumers and national governments demand that meat products are to be contaminant-free. While it is impossible to totally ensure food safety by regulating public livestock markets, it makes sense to strategically position oversight, with requisite rule making and enforcement authority, in the places that give regulators the capability to do the most good to protect the health and safety of consumers, the welfare of the regulated industry, and Colorado's economy

Major Contacts Made During This Review

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

What is a Sunset Review?

A sunset review is a periodic assessment of state boards, programs, and functions to determine whether or not they should be continued by the legislature. Sunset reviews focus on creating the least restrictive form of regulation consistent with protecting the public. In formulating recommendations, sunset reviews consider the public's right to consistent, high quality professional or occupational services and the ability of businesses to exist and thrive in a competitive market, free from unnecessary regulation.

Sunset Reviews are Prepared by:
Colorado Department of Regulatory Agencies
Office of Policy, Research and Regulatory Reform
1560 Broadway, Suite 1550, Denver, CO 80202
www.dora.state.co.us/opr

Table of Contents

Background	1
<i>Introduction</i>	<i>1</i>
<i>Types of Regulation.....</i>	<i>2</i>
<i>Sunset Process</i>	<i>4</i>
<i>Methodology.....</i>	<i>4</i>
<i>Profile of the Profession.....</i>	<i>5</i>
<i>History of Regulation.....</i>	<i>6</i>
Legal Framework.....	7
<i>Federal Oversight.....</i>	<i>7</i>
<i>Colorado Statute Summary.....</i>	<i>8</i>
<i>Rules and Regulations</i>	<i>11</i>
Program Description and Administration.....	12
<i>Other Regulatory Conditions.....</i>	<i>15</i>
<i>Licensing.....</i>	<i>15</i>
<i>Inspections.....</i>	<i>16</i>
<i>Complaints/Disciplinary Actions.....</i>	<i>17</i>
Analysis and Recommendations.....	19
<i>Recommendation 1 – Continue the regulation of public livestock markets for five years, until 2014.</i>	<i>19</i>
<i>Recommendation 2 – Schedule the Board for sunset review in 2012.....</i>	<i>20</i>
<i>Recommendation 3 – Remove the May 1 license renewal date, in section 35-55-103, C.R.S. and allow the Commissioner to set renewal dates administratively... </i>	<i>21</i>
<i>Administrative Recommendation 1 – The Department of Agriculture should develop and implement a plan to transfer the regulatory authority for public livestock markets from the State Board of Stock Inspection Commissioners to the Division of Animal Industry.....</i>	<i>21</i>

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

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 State Board of Stock Inspection Commissioners (Board) relating to Article 55 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 Board pursuant to section 24-34-104, C.R.S.

The purpose of this review is to determine whether the currently prescribed regulation of public livestock markets should be continued for the protection of the public and to evaluate the performance of the Board and staff of the Department of Agriculture (CDA) Division of Brand Inspection. During this review, the Board 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 attended Board meetings; interviewed a CDA-approved public livestock market veterinarian, CDA Inspection and Consumer Services Division staff, CDA Division of Brand Inspection staff, and CDA Division of Animal Industries staff; reviewed Board records, including complaint and disciplinary actions; interviewed officials with state and national professional associations; interviewed consumers, consumer groups and members of the regulated community; performed a media analysis; examined case law; reviewed Colorado statutes and Board rules; and reviewed the laws of other states.

Profile of the Profession

The Board has possessed regulatory jurisdiction over the licensing of public livestock markets since 1937. Public livestock markets are also known as sale barns, sale rings, auction houses, stockyards, and other colloquial terms. Commonly, a public livestock market is a place, establishment, or facility operated for compensation or profit where livestock, defined in statute as, horses, mules, cattle, burros, swine, sheep, goats, poultry, and alternative livestock, is received, held, or assembled for sale.²

Regardless of the name, they operate similarly. Livestock is consigned to the operator, undergoes veterinarian and brand inspections, is usually marketed for sale to an audience rather than individuals, and then purchased. During the sunset review period, fiscal year 02-03 through fiscal year 06-07, approximately 20 percent, 3,787,392, of all brand inspections performed in Colorado were at public livestock markets. The most frequent market operating scenarios involve immature cattle consigned to the market operator by a cow/calf producer, purchased by an operation that will raise it to maturity, and then sell it for slaughter. While this is the typical situation, it is not the rule. All species of domestic livestock are consigned to public livestock market facilities and sold. Dairy cattle, breeding stock, horses, mules, and burros, sheep and goats, hogs, and, rarely, alternative livestock such as domestic elk and fallow deer are sold through the facilities.

Though the livestock industry's contribution to Colorado's economy has been on a slight downward trend over the last two years,³ livestock products still contribute nearly \$4 billion to the state's economy amounting to approximately 74 percent of the total state agricultural output. Of the nearly 4 million non-poultry animals in the state, 2.7 million or 70 percent of the inventory, as of January 1, 2007, were either cattle or calves. Considering all states, Colorado ranks high nationally in the number of cattle and calves (10th), lamb crop (9th), and the number of sheep and lambs, fed cattle marketings, and cattle on feed categories which all rank fourth among the 50 states.⁴

As of July 10, 2008, there were 43 licensed public livestock markets in Colorado. Slightly fewer than half of the markets sold livestock at least one day per week while the remainder operated less often. There are also internet and video auctions which are not licensed under the Public Livestock Markets Act (Act) unless payment is made through the operator of the internet/video site, i.e., there is a consigned or brokered relationship. However, the requirement for a brand inspection exists for all equine, bovine, and alternative livestock transactions, whether or not the transaction occurs at a licensed facility.

² § 35-55-101, C.R.S.

³ University of Colorado, *Colorado Economy To Grow Slightly In 2008 CU-Boulder Forecast Predicts*. Retrieved January 23, 2008, from <http://www.colorado.edu/news/releases/2007/480.html>

⁴ U.S. Department of Agriculture and Colorado Department of Agriculture, *Colorado Agriculture: A Profile*, March 2007.

History of Regulation

State oversight of public livestock markets began in Colorado in 1937 with the regulation of livestock sale rings. The Board has had regulatory jurisdiction over the licensing since that time and administers regulation through the Division of Brand Inspection of the CDA.

The Board's chief charge is to inspect brands to verify ownership of equine, bovine, and, since 1994, alternative livestock.⁵ Beginning in 1963, statute has demanded brand inspection for virtually all branded animal transport and sale.⁶ Today, the Board administers more than 37,000 livestock brands to identify ownership. Brand inspection is used as an ownership protection tool to verify ownership in cases of strayed or stolen livestock. Inspections also aid other identification programs by providing an ability to trace animals to their herd of origin.⁷

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

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

Notwithstanding the courts continual animal identification-oriented decisions, during 1948, the Colorado Supreme Court ruled, in *Seal v. State Board of Stock Inspection Commissioners*, that the reason for the Colorado Public Livestock Market Act is the "prevention of the spread of infectious or contagious diseases of animals."⁸ The legislature also added to the veterinary inspection section of the statute when, during the 1996 legislative session, it added clauses pertaining to animal fitness prior to sale.⁹ In doing so, it implied that the nexus between livestock health and human health was important.

⁵ § 35-41.5-102(1), C.R.S., defines alternative livestock as domesticated elk or fallow deer.

⁶ § 35-53-101 *et seq.*, C.R.S.

⁷ CDA, *Brand Inspection Board*. Retrieved March 13, 2008, from <http://www.colorado.gov/cs/Satellite?c=Page&childpagename=Agriculture-Main%2FCDAGLayout&cid=1167928197096&p=1167928197096&pagename=CDAGWrapper>

⁸ *Seal v. State Board of Stock Inspection Commissioners*, 167 P.2d 22, p.114 Colo. 497, (1948)

⁹ House Bill 96-1340.

Legal Framework

Federal Oversight

Federal regulation of public livestock markets is informed by the Packers and Stockyards Act (P&S).¹⁰ According to Congress, the rationale for P&S enactment is:

...to assure fair competition and fair trade practices, to safeguard farmers and ranchers...to protect consumers...and to protect members of the livestock, meat, and poultry industries from unfair, deceptive, unjustly discriminatory and monopolistic practices...¹¹

The U.S. Department of Agriculture (USDA) advances its mission as the federal government's livestock business oversight authority through a series of program actions including:¹²

- Administering programs involving payment protection for livestock, bonding, packer trust, and surveillance of custodial accounts.
- Conducting major investigations involving fraud, unfair competition, and deceptive practices.
- Ensuring accurate scales and accurate weighing of livestock, meat, and poultry.
- Monitoring market performance.
- Carrying out the payment and statutory trust provisions of the Poultry Producers Financial Protection Act of 1987.
- Continuing certification of the "clear title" systems established and implemented under the Food Security Act of 1985 to ensure that livestock and poultry are not paid for twice.
- Reviewing stockyard services, handling practices, and facilities.

All Colorado public livestock market regulatory efforts exist under the regulatory umbrella established by P&S. P&S requires that entities engaged in the business of marketing livestock, meat, and poultry are directed by P&S, including: stockyard owners, market agencies, dealers, packers, swine contractors, and live poultry dealers.¹³ P&S demands financial surety from all livestock dealers to help ensure that sellers receive prompt payment for animals sold.

¹⁰ 7 U.S.C. § 181, *et seq.*

¹¹ US Department of Agriculture, *Livestock, Meat , & Poultry*, Retrieved March 25, 2008, from <http://www.gipsa.usda.gov/GIPSA/webapp?area=home&subject=Imp&topic=landing>

¹² *ibid.*

¹³ US Department of Agriculture, *Livestock, Meat , & Poultry*; Regulated Entities,. Retrieved March 25, 2008. from <http://www.gipsa.usda.gov/GIPSA/webapp?area=home&subject=Imp&topic=re>

There is also provision in the Federal Meat Inspection Act that all cattle, sheep, swine, goats, horses, mules, and other equines undergo an inspection before entering a slaughtering facility. The purpose is to determine if disease is present and to separate tainted meat and meat products.¹⁴ The USDA Animal and Plant Health Inspection Service (APHIS) program demands an Interstate Certificate of Veterinary Inspection within the 30 days prior to an animal crossing any state border.

Colorado Statute Summary

Article 55 of Title 35 (Article 55), Colorado Revised Statutes (C.R.S.), the Colorado Public Livestock Market Act (Act) addresses the licensing and operation of public livestock markets in Colorado. Generally, a public livestock market is a place, establishment, or facility operated for compensation or profit where livestock (horses, mules, cattle, burros, swine, sheep, goats, poultry, and alternative livestock) is received, held, or assembled for sale.¹⁵ The Act does not address the purpose of the sale, i.e., there is no regulation of markets in this section with regard to purchase for slaughter, breeding, or any other post-purchase function by the purchaser.

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

Business Practices and Procedures

Licensure

To obtain and maintain a license to operate a public livestock market in Colorado, which is valid for one year, a person or entity must meet conditions and follow regulations in a number of areas including:¹⁶

- Disclose all parties with a financial interest in the public livestock market.
- Demonstrate financial viability, stability, and responsibility of the applicant.
- Have the ability to comply with P&S.
- Control real property where improvements meet specifications regarding animal holding and inspection.
- Use all forms required by the State Board of Stock Inspection Commissioners¹⁷ (Board) to complete any livestock transaction.
- Operate the public livestock market only on the day(s) the Board decides the market may operate.

¹⁴ 21 U.S.C. § 603(a)

¹⁵ § 35-55-101, C.R.S.

¹⁶ § 35-55-102, C.R.S.

¹⁷ The State Board of Stock Inspection Commissioners is created by § 35-41-101 *et seq.*, C.R.S., and is empowered to create rules and implement and enforce provisions of Article 55 by § 35-55-106, C.R.S.

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

Fees & Bond

The public livestock market operator must pay a licensing fee to obtain a license to operate, upon approval of an application by the Board. Renewal must be completed prior to May 1 of each succeeding year with reapplication, approval, and payment of the licensing fee.¹⁸ All licensing fees are placed in the Brand Inspection Fund to pay Board expenses.¹⁹ Either the original or a certified copy of the license must be posted, in a conspicuous place, on public livestock market premises during sale periods.²⁰

A license applicant must be indemnified in an amount to be determined by the Board based on the dollar volume of business transacted by the public livestock market. Each business must be bonded by a Board-approved surety company or have the predetermined amount of cash available, with \$25,000 being the minimum amount. The aggregate liability in actions taken against the bond may not exceed the sum of the bond. If a public livestock market is registered and bonded under P&S and the bond guarantees payment of all Colorado brand and sanitary inspection fees, then no other bond is required.²¹

Discipline

The Board may place a licensee on probation, or revoke or suspend a license for any violation of the Act or any rule instituted by the Board, including but not limited to: shipment, facility sanitation, recordkeeping, and fraud.²² The Board employs administrative law judges who conduct hearings to determine what degree of discipline is warranted for an infringing licensee.²³ If, after investigation, a local district attorney finds a violation of the Act has occurred within its jurisdiction, then that office *must* take legal action on the violation. However, the Board, on its own initiative or as the result of a complaint, may prosecute in district court through the Colorado Attorney General's Office any statute violation or rule infraction.²⁴

¹⁸ § 35-55-103, C.R.S.

¹⁹ § 35-55-115, C.R.S.

²⁰ § 35-55-105, C.R.S.

²¹ § 35-55-104, C.R.S.

²² § 35-55-107(1), C.R.S.

²³ § 35-55-108(2), C.R.S.

²⁴ § 35-55-117, C.R.S.

Inspection-Oriented Practices and Procedures

Facility Inspection

All Colorado public livestock markets are to be kept in a clean and sanitary condition. Though there is no formal inspection authority given in statute, if the Board determines it is necessary, it can authorize a cleaning and disinfection administered by a Colorado Department of Agriculture (CDA)-sanctioned veterinarian.²⁵ All scales used in the operation of a public livestock market are regulated under Colorado's weights and measures laws.²⁶

Detailed records concerning all specific transactions, animal care and handling actions, and gross figures concerning numbers of animals and sales by a facility must be kept and easily accessible for inspection by a Board designee.²⁷

Animal Inspection

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

Brands

Upon consignment for sale to a public livestock market, all cattle, horses, mules, and burros must be inspected by a Board-approved brand inspector. In all cases, it is the responsibility of the consignor to prove ownership to the brand inspector. This may be achieved by many methods but it is the brand inspector who determines if the sale of a given animal will be allowed. The inspector certifies animal ownership for both the facility operator, as a prerequisite for the owner to issue a bill of sale to a buyer, and for the Board. The brand inspection fee comes out of the transaction sale proceeds.²⁸

Veterinarians

All livestock presented for sale at a licensed facility must undergo an examination by a CDA-authorized veterinarian, paid for by the operator, to determine the presence of infectious or contagious disease. This determination must be made prior to any animal being allowed to leave the facility. The veterinarian is empowered by the Act to permit movement, quarantine the animal, and/or euthanize based on the examination results. If euthanization is necessary, the cost of the procedure is the responsibility of the consignor. In all cases, veterinarians and market operators must adhere to federal laws, rules, and regulations concerning animal shipment and health.²⁹

²⁵ § 35-55-109, C.R.S.

²⁶ § 35-55-110, C.R.S.

²⁷ § 35-55-111, C.R.S. The designee is typically the brand inspector but does not have to be.

²⁸ § 35-55-112, C.R.S.

²⁹ § 35-55-113, C.R.S.

Title

The operator of a public livestock market provides title warranty to the purchaser of any livestock sold at the facility. If the brand inspector has an issue concerning ownership of an animal, the market operator must hold all sale proceeds until either ownership is established or the Board guarantees title.³⁰

Rules and Regulations

The Board has promulgated rules and regulations to establish a desired code of conduct at public livestock markets and to facilitate animal identification for sale. The rules inform the market operator what forms are preferable, what information is required on a bill of sale, where to post consignment documentation, stock sorting procedures for pre- and post-purchase, inspection procedures, and fee collection practices.

The State Veterinarian has promulgated rules and regulations defining terms, giving notice to animal owners concerning the veterinarian inspection process, establishing procedures for the inspection, removal, and euthanization of animals, and naming diseases and injuries which render animals beyond recovery.

³⁰ § 35-55-114, C.R.S.

Program Description and Administration

One very important dynamic to establish and understand at the outset of this discussion is the role of the State Board of Stock Inspection Commissioners (Board). When reference is made to the Board as the regulator of livestock markets it is not actually the sitting Board members who implement regulations. They are the policy-making authority for the Division of Brand Inspection (Division) of the Colorado Department of Agriculture (CDA). Oversight is actually carried out through the Division of Brand Inspection and the Brand Commissioner as its head administrator.

The Division predates Colorado statehood and its statutory obligation has been, since its inception, to inspect the brands on equine and bovine animals. Now that charge includes alternative livestock animals. Everything it does is seen through that organizational lens. All statutory responsibilities added since Board establishment, from regulation of livestock markets and slaughterers to transportation of animals, proceed with brand identification to verify ownership and prevent theft as the central duty. The bureaucracy of the Division is set up accordingly.

Including Colorado there are 14, all western, states that perform brand inspection as a means of identifying livestock.

As of July 10, 2008 there were 43 public livestock markets licensed by the Board, 16 (37.2 percent) of which sold livestock at least one day per week while the remainder operate less often, and 9 (20.9 percent) operate only one time per year. There are also internet and video auctions which are not licensed by the Board because they do not operate from a specific location, which is required in the Public Livestock Markets Act (Act). The Board also determines days that a licensee is able to operate.³¹

The Board is a Type I, cash-funded enterprise. The Board does not segregate revenues and expenditures according to the separate statutory tasks it is responsible to implement, i.e., there is no separate accounting for the regulation of public livestock markets, or the required license, under the Act and slaughterer's licensing under section 12-11-101, *et seq.*, C.R.S. The Board keeps track of its funds in the aggregate with no distinction among its statutory functions.

The table below represents estimates of livestock market brand inspection expenditures and full-time equivalent (FTE) employees. The estimates are calculated by taking total Board expenditures for brand inspections during a given fiscal year and multiplying by the estimated percentage of employee time devoted to those inspections. Beyond estimates of this nature, it is impossible for a reviewer, legislator, or taxpayer to know what money is being spent on this specific Board program.

³¹ § 35-55-102(6), C.R.S.

Table 1
Public Livestock Market Program Expenditures
(Brand Inspections)

Fiscal Year	Expenditures	FTE
02-03	\$436,775	8.4
03-04	\$626,736	12.0
04-05	\$477,620	9.0
05-06	\$501,914	9.6
06-07	\$512,154	9.6

The State Veterinarian's office uses roughly five percent of an FTE (0.05 FTE) for its administrative concerns. The on-site veterinarians, who inspect the animals at public livestock markets, contract with the owner/operator and are paid from the consignor's sales proceeds. They are authorized by CDA but not employed by CDA.

Organization

The Act is implemented by the Brand Commissioner, who is a state classified employee, directed by the Governor-appointed, five-member Board. The Brand Commissioner oversees a six-member support staff and both full- and part-time brand inspectors located throughout the state. Brand inspectors inspected, on average, nearly 760,000 animals yearly, costing an average of \$126,226 at Colorado public livestock markets during fiscal years 02-03 through 06-07.

Administration

The center of attention in public livestock market regulation is the identification of equine, bovine, and alternative livestock animals. To accomplish its goal the Board licenses facilities and inspects those species as they enter a public livestock market to determine ownership before they are sold. It is the responsibility of the consignor to prove ownership to the brand inspector.

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

There is also programmatic overlap with other Colorado statutes that involve brand inspection and Board oversight:

- Section 35-41-101, *et seq.*, C.R.S., State Board of Stock Inspection Commissioners, establishes the Board and authorizes it to create rules necessary to inspect livestock for identification
- Section 35-41.5-101, *et seq.*, C.R.S., Alternative Livestock Act, establishes the Board as the regulatory body charged with oversight of alternative domestic livestock operations.
- Section 35-43-101, *et seq.*, C.R.S., Branding and Herding, establishes laws for branding types and processes, recording, uses, assessment, and counterfeiting of brands in Colorado.
- Section 35-44-101, *et seq.*, C.R.S., Estrays, determines Board procedures for identifying, determining ownership, and selling stray bovine, equine, or alternative livestock animals.
- Section 35-53-101, *et seq.*, C.R.S., Transportation of Livestock, codifies brand inspection procedures, times, and places including a restating a provision that all cattle must be inspected on arrival at a market.
- Section 35-53.5-101, *et seq.*, C.R.S., Feedlot Certification, charges the Board with adopting rules to certify and regulate feed lots.
- Section 35-54-101, *et seq.*, C.R.S., Sale of Stock, requires a detailed bill of sale in all livestock transactions noting species, markings, sex, age, and breed among other particulars. Selling without a bill of sale constitutes theft.

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

Other Regulatory Conditions

The following are operating conditions, addressed in Board rules and regulations, with which a licensee must comply to obtain and maintain a license to operate a public livestock market:

- A licensee must also obtain a Farm Products License issued by CDA Inspection and Consumer Services Division (ICS).
- An applicant must have a contract with a State Veterinarian-approved veterinarian who will inspect every animal, at every sale.
- The Brand Inspector assigned to the livestock sale must approve standardized consignment cards and forms for sale and purchase.
- The brand inspection is paid for out of the sale proceeds.

There are also rules and regulations concerning display of paperwork, physical facility requirements, sale procedures, and scheduling as authorized by statute.

Licensing

While the concentration of effort implementing public livestock market regulation is the identification of equine and bovine animals, the initial market licensing procedures are broader in scope. The Board requires specific items and information concerning location, financial responsibility, and contractual provisions before licensure.³²

- A completed application received and approved by the Board.
- A copy of the contract with an approved veterinarian.
- Information describing the physical facility and proof of control of the facility such as a lease.
- A request asking Board approval for dates to sell livestock.
- Financial surety, \$25,000 minimum, required by both Colorado statute and the federal Packers and Stockyards Act (P&S), with the Brand Commissioner, or the Board itself, made trustee of classified monies.³³
- A Farm Products License issued by ICS.

Prior to license issuance, the Board notifies the applicant of the rules and regulations concerning recordkeeping, transaction requirements, animal identification, and segregation among other actions required by an operator to run a livestock market.³⁴

³² Public Livestock Market License application.

³³ The surety must either be a bond issued through the Packers and Stockyards program, a certificate of deposit, applicable in very specific, seldom used circumstances, or a letter of credit issued by a Colorado bank.

³⁴ Public Livestock Market License application.

According to statute, once granted, a license expires on April 30 regardless of when it is issued and a renewed license is good beginning May 1.³⁵ During the review period, the number of licenses issued was consistently around 40 per year.

**Table 2
Licensed Facilities**

Fiscal Year	Total
02-03	43
03-04	40
04-05	41
05-06	41
06-07	40

Inspections

The Board reported no facility inspections for the study period.

Table 3 below reflects the number of animals inspected by the Board at public livestock markets. Brand inspectors averaged nearly 760,000 animal inspections at Colorado public livestock markets during fiscal years 02-03 through 06-07. The Board does not inspect, so the data does not include information pertaining to any hogs, goats, sheep, or other non-equine, bovine, or alternative livestock animals sold at public livestock markets nor does it include information relating to veterinarian or facility inspections.

**Table 3
Public Livestock Market
Brand Inspection Information**

Fiscal Year	Number of Inspections at Public Livestock Markets	Total Brand Inspections Performed (Change of Ownership, Transportation, Fee Waiver, Feedlot Inspections)
02-03	1,066,707	4,095,687
03-04	664,093	4,080,493
04-05	647,779	3,748,197
05-06	690,122	3,697,631
06-07	718,691	3,531,568
Total	3,787,392	19,153,576

³⁵ § 35-55-103, C.R.S.

The veterinarian inspection provisions are carried out on-site, by CDA Commissioner-approved veterinarians on all consigned animals. The overwhelming majority of the animals that go through the markets are fit. In the cases where the veterinarian determines that an animal is not fit, he/she condemns the animal and orders that it be destroyed. The on-site market veterinarian then records and sends to the Colorado State Veterinarian records of animals ordered removed from public livestock markets. However, there is no such record transfer required when an animal is ordered to be euthanized nor does a central database exist to keep track of instances of disease. The table below shows the number of veterinarian inspections, by species, performed at Colorado public livestock markets. It illustrates that equine and bovine animals make up the majority of species inspected at the markets but other species make up a significant portion of the total.

**Table 4
Veterinarian Inspections at Livestock Markets**

Fiscal Year	Cows	Sheep/Goats	Horses	Swine
02-03	847,925	85,919	10,603	13,027
03-04	609,136	71,114	16,810	15,377
04-05	546,319	57,434	10,267	11,143
05-06	635,093	82,173	11,266	12,417
06-07	700,000	72,000	15,000	15,500

Complaints/Disciplinary Actions

Table 5 below indicates that the Board received one complaint critical of public livestock market operation during the review period, during fiscal year 05-06. In that circumstance the Board issued a letter of admonition to a licensee for failing to get proper inspections before cattle crossed state lines. The Board took no other disciplinary actions against facilities or recorded claims against the financial indemnification a facility operator must have in place before being licensed.

Table 5
Livestock Market Disciplinary Actions

Type of Action	FY 02-03	FY 03-04	FY 04-05	FY 05-06	FY 06-07
Revocation	0	0	0	0	0
Surrender of License	0	0	0	0	0
Suspension	0	0	0	0	0
Probation / Practice Limitation	0	0	0	0	0
Letter of Admonition	0	0	0	1	0
License Granted with Probation/Practice Limitations	0	0	0	0	0
License Denied	0	0	0	0	0
Injunction	0	0	0	0	0
Fine	0	0	0	0	0
Facilities Ordered Cleaned	0	0	0	0	0
Actions Against Bond	0	0	0	0	0
District Attorney Article 55 Actions	0	0	0	0	0
Total Disciplinary Actions	0	0	0	0	0
Total Dismissed	0	0	0	0	0

Analysis and Recommendations

Recommendation 1 – Continue the regulation of public livestock markets for five years, until 2014.

The public livestock market is an important industry stop, especially for smaller scale livestock producers. It offers a place to market animals to multiple buyers at one time providing maximum exposure. It is also a place where state regulators perform two types of livestock inspections: brand inspections to verify title for equine, bovine, and alternative livestock animals prior to sale and veterinarian inspections to verify that each animal at the market is disease-free and fit for sale.

Livestock products contribute nearly \$4 billion to the Colorado economy each year, amounting to approximately 74 percent of the total state agricultural output.³⁶ During the sunset review period, fiscal year 02-03 through fiscal year 06-07, approximately 20 percent of all brand inspections performed in Colorado were at public livestock markets. This percentage indicates that a significant portion of livestock business transactions occur in these facilities.

Brand inspections protect the principals involved in a livestock transaction, the seller, the public livestock market operator, and the buyer from theft and fraud. Brand inspections also help keep the livestock economy viable. The veterinarian inspections protect the principals in multiple ways. They help protect the purchaser from buying an animal that may not be fit for the purpose intended, whether that purpose is for showing, working, or raising for slaughter. They also provide protection to the public and the livestock industry from the devastating effects of disease.

There are many communicable diseases, such as Cholera, Foot-and-Mouth disease, and Escherichia Coli, that are almost completely kept in check because of vigilance in oversight. One diseased animal can have wide-ranging health effects for large populations. Veterinary inspections help protect the industry from the economic fallout that comes with an outbreak of disease and the consumer from potentially deadly illness. It provides the ability for the industry to segregate and eliminate potential problems while they are small enough to manage.

Because the recommendations in this sunset review advocate that major changes take place in public livestock market regulation, the General Assembly should continue the Public Livestock Markets Act for five years, until 2014.

³⁶ *Colorado Agriculture: A Profile*, US Department of Agriculture and Colorado Department of Agriculture (2007).

Recommendation 2 – Schedule the Board for sunset review in 2012.

In Colorado, brand inspection dates to 1865, and the Board has been authorized in statute since 1903 without undergoing a sunset review. Sunset review is standard practice for regulatory bodies. It is the way state government continually looks at itself and monitors its purposes and effectiveness.

The sunset authority, section 24-34-104, *et seq.*, C.R.S., provides the ability for the General Assembly to examine regulatory systems by way of a disinterested third party. The sunset review process is guided by a statutory framework that helps ensure that the public's interests are enhanced by regulation and that regulation is indeed necessary. Having outside examiners look at a program also provides clean eyes not clouded with predispositions and cultural experiences to assist the regulating agency, affected consumers, and the General Assembly in evaluating systems and processes. Systems that go on infinitely unexamined can become stodgy, unresponsive to current market conditions, or, in the worst cases, corrupt. The sunset review process helps mitigate possible harms from unexamined regulatory power.

During this review cycle, reviews have been conducted on two Board charges: the Colorado Slaughterers Act and the Public Livestock Markets Act. The recommendation to schedule the Board for sunset review appears in both 2008 sunset reviews. To continually look at the separate functions of the Board and not review the Board as a whole entity, considering all its functions in the process, is not an efficient, ordered analytical approach. A holistic approach to system examination allows the General Assembly to weigh the interdependence of all the parts to see how they fit together. The piecemeal approach, the current method, does not allow for such a view. Generally, the review of an oversight board or commission is a multifaceted or holistic endeavor.

There is recent precedent for the review of boards and commissions which have policy-making authority over entire divisions of state government. Reviews conducted by the Department of Regulatory Agencies include the Public Utilities Commission (2008) and Civil Rights Commission (2009). These reviews were conducted with a holistic character as they scrutinized the policy-making and implementation roles, as well as the individual statutory administrative functions each commission assumes as an oversight authority.

Therefore, the Board should be scheduled to sunset, pending a review during the 2012 session of the Colorado General Assembly.

Recommendation 3 – Remove the May 1 license renewal date, in section 35-55-103, C.R.S. and allow the Commissioner to set renewal dates administratively.

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

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

Administrative Recommendation 1 – The Department of Agriculture should develop and implement a plan to transfer the regulatory authority for public livestock markets from the State Board of Stock Inspection Commissioners to the Division of Animal Industry.

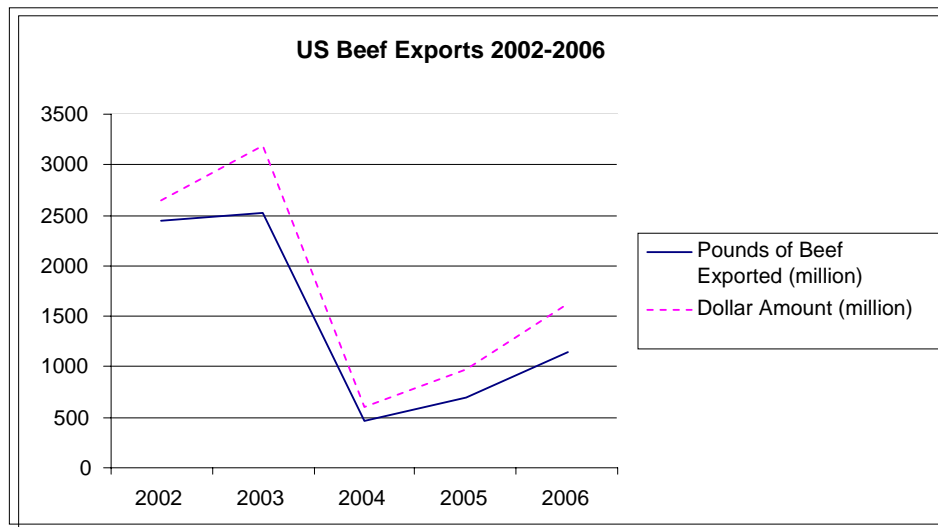
A major concern for the livestock industry is keeping food animals free from disease. The discovery of Bovine Spongiform Encephalopathy (BSE) in one cow in Washington state during 2003, the detection of Foot-and-Mouth disease in the United Kingdom, combined with reports of Escherichia Coli- and Salmonella-based food recalls has resulted in increased consumer concern. Food born pathogens, BSE, Foot-and-Mouth disease, Salmonella, Cattle Tuberculosis, Chronic Wasting Disease, Bird Flu, and other livestock related maladies are now a part of common conversation, whether or not the average person actually knows what they mean or if he or she could actually be harmed by them. These phrases elicit concern in consumers who never heard them in the very recent past. While the incidences of human occurrence for most of these diseases are rare, or nonexistent, the economic consequences have proven to be devastating when an outbreak occurs.

The economic health of the meat and livestock industry is very dependent on how it deals with public perceptions surrounding the issues of livestock disease and food contamination. Two small 2007 outbreaks of Foot-and-Mouth disease in the United Kingdom ended with the destruction of nearly 100 head of cattle and forced 10 million more cattle, 23 million sheep, and 5 million pigs to be quarantined. In 2001, an outbreak resulted in the slaughter of 6.5 million head of livestock. Foot-and-Mouth disease is a severe, highly communicable viral disease of cattle and swine. It also affects sheep, goats, deer and other cloven-hoofed mammals. The U.S. has been free of the disease since 1929, but outbreaks can occur quickly.³⁷

³⁷ Jim Gransbery, "Veterinarian points to risks of foot-and-mouth disease," *Billings Gazette*, December 13, 2007. Retrieved August 11, 2008. from <http://www.billingsgazette.net/articles/2007/12/13/news/local/35-veterinarian.txt?wwparam=1199996250>

When a Washington state BSE discovery was made in 2003, it had a profound effect on the U.S. livestock industry. Domestically, sales dipped for a short period of time but recovered quickly.³⁸ However, a quick recovery did not occur in the U.S. beef export business. The graph below illustrates the effects. Exports in 2003 totaled 2.52 billion pounds and \$3.19 billion but those totals dropped more than 81 percent in 2004, to 460 million pounds and \$605 million. By 2006 there was some recovery but both totals were still down more than 50 percent, an estimated \$1.56 billion. In 2003, nearly 10 percent of the beef produced in the U.S. was exported and in 2006 exports were only 4.4 percent of the total.³⁹

Graph 1



The logical conclusion is that while consumers' fears here in the U.S. can be allayed fairly quickly, that is not the case for non-U.S. markets. This could be explained several ways: a familiarity with brand, an individual consumer's own cost-benefit analysis, or a reliance on the efficacy of government regulation. It is likely that a combination of all these and other explanations is what precipitated change, both positive and negative, in the foreign and domestic markets.

³⁸ Fred Kuchler & Ababayehu Tegene, *Did BSE Announcements Reduce Beef Purchases?* US Department of Agriculture, Abstract and Summary (December 2006). Retrieved August 11, 2008, from <http://www.ers.usda.gov/publications/err34/err34fm.pdf>

³⁹ US Department of Agriculture Economic Research Service, *US Beef and Cattle Industry: Background Statistics and Information*. Retrieved August 11, 2008, from <http://www.ers.usda.gov/news/BSECoverage.htm>

Health-based concerns are as widespread as they are similar and ever-present. Today, because of its experiences, the United Kingdom and the European Union have some of the world's strictest rules governing the livestock industry.⁴⁰ As recently as February 2008, the government of Uganda quarantined cattle imported from Kenya and Democratic Republic of Congo.⁴¹ Much of the Asian market still remains closed to U.S. livestock meat and meat products today because of the 2003 Washington event.

During 1948, the Colorado Supreme Court ruled, in *Seal et al v. State Board of Stock Inspection Commissioners*, that the reason for the Colorado Public Livestock Market Act is the prevention of the spread of infectious or contagious diseases of animals.⁴² However, the decision has little effect on the inspection and oversight process currently in place.

In Colorado, while there is a veterinary inspection of each animal that goes through the market. The State Board of Stock Inspection Commissioners (Board), exclusively addresses brand inspection. The Board sees to it that there is a veterinarian on-site at public livestock markets but the veterinarian works autonomously from the Board. The Board does not keep record of any animals that are not brand inspected.

The Division, the administrative arm of the Board, predates Colorado statehood. Its statutory obligation has been, since its inception, to inspect the brands on equine and bovine animals and for just over a decade that charge includes alternative livestock. Everything it does is seen through that lens. This applies to all the Division's statutory responsibilities as delineated by the Colorado Revised Statutes. The organization's bureaucracy is set up for that purpose. Colorado is one of 14 brand inspection states and this is the organization that has inspected brands for over a century. By all testimony, the system in place works well for that purpose. The Division's self-defined duties, as revealed on its web site, are:⁴³

The Division of Brand Inspection's primary responsibility is to protect the livestock industry from loss by theft, illegal butchering, or straying of livestock.

⁴⁰ Sandi Doughton, "Should U.S. follow U.K. on mad cow?" *Seattle Times*, February 5, 2004. Retrieved February 4, 2008, from http://seattletimes.nwsources.com/html/health/2001851042_madfeed05m.html

⁴¹ Joseph Miti & Anisa Mahfoodh Kampala, "Uganda: Livestock Diseases Break Out", *The Monitor*, February 3, 2008. Retrieved on February 4, 2008 from <http://allafrica.com/stories/200802030010.html>

⁴² Seal et al. v. State Board of Stock Inspection Commissioners, 167 P.2d 22, 26 (Colo. 1948).

⁴³ Colorado Department of Agriculture. *Welcome to the Brand Inspection Division!* Retrieved February 22, 2008, from <http://www.colorado.gov/cs/Satellite?c=Page&cid=1167928197096&pagename=Agriculture-Main%2FCDAGLayout>.

The Division is assigned five principal regulatory responsibilities:

- Record and administer livestock brands;
- Inspect livestock and verify ownership before sale; transportation beyond 75 miles, transportation out of state, or slaughter;
- Inspect and license packing plants, livestock sale rings, and inspect all consignments before sale to verify ownership;
- License and inspect alternative livestock (elk and fallow deer) facilities; and
- Prevent and return strayed or stolen livestock and to investigate reports of lost or stolen livestock.

Because the Board interprets its duties specifically in this manner, there is no oversight of the veterinarians stationed at each public livestock market, other than to make sure one is under contract pre-licensing, and no record is kept by the Board of instances of disease or animal condemnation.

Both examination of the mission of the Division of Animal Industry (AI) and analysis of public livestock market management in peer western states dictates that the locus of licensing power should move to AI. AI houses the State Veterinarian and one of its major concerns is defense of the Colorado livestock industry. The main page of the AI web site has the following statement:

The Division of Animal Industry is responsible for animal health and disease control activities in Colorado. We work in close cooperation with the livestock industry and veterinary medical organizations, as well as other state and federal agencies to protect the health, welfare, and marketability of Colorado livestock.⁴⁴

Thus far there have not been any incidences of major disease relating to livestock reported in Colorado. Fact is, there has only been one BSE event reported across the entire U.S., more than five years ago, and the livestock industry still has not recovered. The self-described purpose of this division within the CDA states that disease prevention is the reason for its existence. Given the conditions and public perceptions which drive the livestock economy, this is the division best suited for market oversight.

⁴⁴ Colorado Department of Agriculture. *Animal Industry*. Retrieved March 19, 2008, from <http://www.colorado.gov/cs/Satellite?c=Page&childpagename=Agriculture-Main%2FCDAGLayout&cid=1167928197091&p=1167928197091&pagename=CDAGWrapper>

Other western states have concentrated regulatory effort in a direction different from Colorado's and in-line with this Administrative Recommendation 1. The majority are similar to Colorado in that brand, veterinarian, and weight/scale inspections are required. Of the states adjacent to Colorado, only Arizona and Oklahoma do not require a state license to operate a public livestock market. Texas does not license markets either and while it is not an adjacent state, it is included in the examination because it has the largest cattle industry of all 50 states. Table 6 below compares public livestock market regulation in Colorado with other western states.

**Table 6
Western States' Livestock Market Regulation**

State	Oversight Agency	Identification Inspection	Other Inspections	Minimum Indemnification
AZ	No License	Brand inspection	health	NA
CO	Brand Board	Brand inspection	veterinarian, scales	\$25,000
ID	Animal Industry	Brand inspection	animals weighed by license weigh-master, sanitation	Bond issued Under 7 U.S.C., section 181 <i>et seq</i>
KS	Animal Health	Upon request or Agriculture Commissioner's direction	veterinarian	\$20,000
NE	Animal Industry	Brand inspection	veterinarian	\$5,000
NM	Livestock Board	Brand inspection	sanitation, veterinarian, scales	Bond issued Under 7 U.S.C., section 181, <i>et seq.</i>
OK	No License	Adequate sales records	veterinarian	Auction - \$25,000 Dealer-\$10,000
TX	No License	USDA Animal Plant Health Inspection Service	veterinarian	Number based on average sales - \$2,000 minimum
UT	Animal Industry	Brand inspection	animals weighed by licensed weigh-master, sanitation	Bond issued Under 7 U.S.C., section 181, <i>et seq.</i>
WY	Livestock Board	Brand inspection	facility sanitation, scales, veterinarian	\$25,000

Though most of the other states perform brand inspections, the oversight agency and concentration of regulatory effort for public livestock markets generally has an animal health orientation. Divisions of Animal Health and Animal Industries in the other states have veterinary, rather than identification, orientations just as in Colorado. At the Livestock Board in Wyoming, effort is equally divided between animal health and brand inspection regulation. The Livestock Board in New Mexico (NMLB) also includes both the brand and veterinarian inspection programs but the regulatory demeanor the NMLB takes toward administration is that the market demands more attention be paid to the veterinarian inspection than brand inspection. The NMLB's philosophy is, "The state's economy is affected more by disease than it is by one cow's ownership," according to one high-ranking administration official. The difference in regulatory character is significant between Colorado and its peer states. In the peer states oversight is dominated by an animal health ethos.

This recommendation is not a claim that the Board does not do the job it is intended to do. Review of the Board, as a whole, is not within the purview of this review and there is no judgment made here with regard to its effectiveness to carry out its mission inspecting brands. The sole intent is to clarify that the Division of Brand Inspection does not have the infrastructure or organizational culture to match the current marketplace, while AI does. Furthermore, it is not the intent of this recommendation to undermine the brand inspection system, nor is it recommended that the system change. Rather, because public livestock market regulation is on autopilot, illustrated by the fact that there are no complaints or disciplinary actions on record during the review period, a change in regulatory culture will protect the industry and consumers to a broader extent.

This is an administrative recommendation only in the nominal sense. This is a change that must take place. The worldwide meat products marketplace in the 21st century is driven by the prospect of a clean, healthy food supply. Consumers and national governments demand that meat products are to be contaminant-free. While it is impossible to totally ensure food safety by regulating public livestock markets, it makes sense to strategically position oversight, with requisite rulemaking and enforcement authority, in the places that give regulators the capability to do the most good to protect the health and safety of consumers, the welfare of regulated industry, and Colorado's economy. Placing licensing and regulating authority for public livestock markets in an agency with the goal of keeping the state's livestock herds disease-free, is a scheme employed by the majority of Colorado's peer states. Logically, given the magnitude of the possible consequences, and if the goal is to keep Colorado's livestock population disease-free, Colorado should do the same.

However, CDA is aware of these economic, health, and efficiency related issues and has started to move in this direction and DORA is aware that establishing a new regulatory structure may take time. Therefore, DORA has recommended that the Board undergo sunset review during 2012 in Recommendation 2 of this sunset report. If that recommendation is adopted, DORA will evaluate the extent to which CDA has established the mechanisms necessary to enforce needed protections. If additional changes are needed, the appropriate recommendations can be forwarded to the General Assembly through the Board sunset review.