

SUNSET REVIEW

OF

CONTROLLED ATMOSPHERE STORAGE OF APPLES

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

June 1994

July 29, 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 Controlled Atmosphere Storage of Apples Law. 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 35-23.5-101, et. seq., 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

TABLE OF CONTENTS

EXECUTIVE SUMMARY	1
BACKGROUND.....	1
SUMMARY OF STATUTE AND RULES.....	2
SUNSET ANALYSIS	3
RECOMMENDATIONS.....	4
APPENDIX A	5

EXECUTIVE SUMMARY

The Department of Regulatory Agencies, Office of Policy and Research ("OPR") has concluded its sunset review of the Controlled Atmosphere Storage Facilities for Apples and recommends that the licensure of persons operating a controlled atmosphere storage facility be discontinued.

As it stands, the other areas of the statute will not be affected. Under § 35-23.5-104, the Department still has the authority to develop reasonable rules concerning the controlled atmosphere storage of apples, including: storage facility regulations; record keeping and reports; length of storage time, including the maximum time allowed to reach prescribed atmospheric conditions of temperature, oxygen and carbon dioxide; quality regulations; and labeling and marketing.

Under current law, only apples grown and stored in another state that are stored in such a way that complies with Colorado laws, rules, or regulation governing controlled atmosphere storage of apples may be represented as having been stored in a controlled atmosphere. Abolishing licensure will not affect this provision. Apples grown and stored in other states would still have to comply with any rules and regulations proposed by the Department.

BACKGROUND

THE COLORADO APPLE INDUSTRY

In Colorado, roughly 2.5 million bushels of apples are produced during a good crop year. Colorado produces premium grade apples in many varieties including, Red Delicious, Golden Delicious, Jonathan's, Rome and Galas. This apple production is centered on the western slope. Of the 100 apple producers in the industry, many of them reside in Delta, Mesa, Montrose, Montezuma, and Fremont counties in southern Colorado. Over 75% of apple production occurs in the counties of Delta and Montrose. Colorado's apple crop is available from late September into January. Apples are kept in cold storage from harvest in the Fall until the first of January or February.

ECONOMIC ASPECTS

Apples are Colorado's largest fruit crop both in acreage and sales. The apple industry accounts for approximately \$10 million of the state's \$14 million of total fruit sales. Another significant feature of the apple industry centers around the fact that apple production in Colorado is a vital element of our economy. Not only are the apples grown here, but the packaging, sales, and shipping facilities are also located in the state.

Currently, there is only one business in Colorado that has controlled atmosphere storage of apples. It is Hi-Quality Packing, Inc. located in Delta, Colorado.

CONTROLLED ATMOSPHERE STORAGE STUDY

A study conducted in December, 1989, by the Region 10 League For Economic Assistance And Planning, Inc., intended to determine whether Colorado apples could obtain a larger share of the market of fresh apples if they were preserved longer by an increase in the controlled-atmosphere storage capacity. The existing controlled-atmosphere system cools apples through the use of freon gas. The freon gas reduces the amount of oxygen present in the storage unit, thus reducing the respiration rate of the apples. With the aid of this controlled-atmosphere storage facility, apples are able to last longer and stay fresher from the Fall until early March. This improved method of apple preservation seems to function better than a similar process of cold storage. Unlike the controlled atmosphere process, cold storage only cools down the fruit. There is no modification made in the mixture of oxygen and carbon dioxide.

Currently, developments in new technology have resulted in using a more economical ammonia based systems to replace the environmentally damaging freon gas method in larger storage units.

SUMMARY OF STATUTE AND RULES

SECTIONS SUBJECT TO SUNSET REVIEW

Licensure § 35-23.5-103, C.R.S.:

This section requires that anyone who operates a controlled atmosphere storage of apples facility must obtain a license from the Colorado Department of Agriculture. The commissioner is authorized to establish a license fee to cover the costs of issuing a license and performing an inspection prior to licensing. Licenses expire three years after issuance, but renewal of licensure is possible upon payment of the current fee set by the commissioner (unless the license has been suspended or revoked within the last two years).

Suspension Or Revocation of License § 35-23.5-106, C.R.S.:

The commissioner has the authority to revoke or suspend a license if the licensee has violated any of the provisions in the statute. Such proceedings are governed by article 4 of title 24, C.R.S.

Penalty § 35-23.5-107(1)(a)-(c), C.R.S.:

It is unlawful for any person to:

- operate a facility for storing apples that is represented as being a controlled atmosphere storage facility unless it has been licensed by the commissioner;
- sell, exchange or advertise apples grown in Colorado which are represented as having been exposed to controlled atmosphere unless the apples have been stored in a facility licensed by the commissioner; or,
- advertise, label or represent apples to have been stored in a controlled atmosphere storage facility when they have not been so stored.

SUNSET ANALYSIS

The mission of the Colorado Department of Agriculture is to serve the people of Colorado and to advance agriculture's contribution to Colorado's economic, social, and environmental health. Departmental and division activities which support the agency's mission include; licensing and inspecting, registration and certification, sampling and testing, enforcement actions, market promotion and assistance, technical analysis and development, and distribution of information.

Pursuant to its mission, the Department administers many necessary and effective licensure and inspection programs as evidenced by the other statutes and programs OPR reviewed this year. The Controlled Atmosphere Storage of Apples statute does not fit in the category of a necessary licensure and inspection program.

There is only one business in Colorado that has such a facility. The Department does not do any inspection of the facility to ensure that it complies with the statute. The Department has not set a license fee as required by statute, nor has the Department promulgated any rules or regulations to enforce the statute.

In short, the Department has not developed a licensure and inspection program even though the statute was enacted seventeen years ago. The apple industry has been successful without it, which is excellent evidence that no such regulation is necessary.

RECOMMENDATIONS

RECOMMENDATION:

A) REPEAL § 35-23.5-103 WHICH REQUIRES LICENSURE AND INSPECTION OF CONTROLLED ATMOSPHERE STORAGE OF APPLES FACILITIES.

As discussed in the Sunset Analysis section, this statute has been in effect for 17 years. In that time, the Department has not set a license fee, issued a license, or promulgated any rules or regulations. There is only one business in the state that has a controlled atmosphere storage of apples facility, and it appears it will be the only one for quite awhile.

The lack of regulation has not harmed the apple industry, the grocery industry, or the consumer. Therefore, OPR believes that this licensing requirement is unnecessary and should be discontinued.

B) REPEAL § 35-23.5-106 WHICH AUTHORIZES THE DEPARTMENT TO REVOKE OR SUSPEND THE LICENSE OF ANY VIOLATOR OF THIS STATUTE.

If licensure is repealed, then the Department will not need authority to revoke or suspend a license. Therefore, this provision would become obsolete.

C) REPEAL § 35-23.5-107(1)(A)-(C) WHICH DECLARES CERTAIN ACTS AS UNLAWFUL.

In general, these provisions state that it is unlawful to operate a controlled atmosphere storage of an apple facility without a license, or to advertise, label or otherwise represent apples as having been stored in a controlled atmosphere storage facility unless that facility is licensed by the Department. If licensing is discontinued, then one would not be able to violate these provisions; therefore, they would be meaningless.

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.