

1992 SUNRISE REVIEW

OF

COLORADO SEED SELLERS

**Submitted by the
Colorado Department of Regulatory Agencies
June 1992**

June 15, 1992

The Honorable Bob Schaffer
Joint Sunrise/Sunset Review Committee Chairman
Room 348, State Capitol Building
Denver, Colorado 80203

Dear Senator Schaffer:

We have completed our evaluation of the sunrise application for licensure of Colorado seed sellers and are pleased to submit this written report which will be the basis for my office's oral testimony before the Sunrise and Sunset Review Committee. The report is submitted pursuant to section 24-34-104.1, Colorado Revised Statutes, 1988 Repl. Vol., the "Sunrise Act", which provides that the Department of Regulatory Agencies shall conduct an analysis and evaluation of proposed regulation to determine whether the public needs, and would benefit from the regulation.

The report discusses the question of whether there is a need for the regulation in order to protect the public from potential harm, whether regulation would serve to mitigate the potential harm and, whether the public can be adequately protected by other means in a more cost effective manner.

Sincerely,

Steven V. Berson
Executive Director

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EXECUTIVE SUMMARY

Businesses and individuals selling seed for use in agriculture in Colorado have been regulated for decades under both federal and state seed production laws. The purpose of these laws is to assure that seed which is used by farmers and other consumers is of a sufficiently high quality that crop yields will be maximized and varietal purity will be maintained. The responsibility for the administration and enforcement of these laws has devolved over time onto a mixture of public and private entities including the Colorado Department of Agriculture, the United States Department of Agriculture, the Extension Service of Colorado State University, industry trade associations and concerned farmers, merchants and seed dealers. The purpose of this sunrise application by the Colorado Seedsmen's Association and the Colorado Seed Growers Association is to request that the State of Colorado institute a registration system for sellers of seed in Colorado which will better serve to carry out the purpose of the seed laws in Colorado.

The applicant's case for registration emphasizes the weakness and general unenforceability of the Colorado Seed Act, Article 27 of title 35, C.R.S. They point out that the law is in great need of revision and that, without greater financial support than now exists, there will not be sufficient personnel to effectively run this important regulatory program. The applicants, supported by the seed industry at large, request that stronger regulation be instituted, including statutory revisions and the establishment of a registration system and registration fees which will revive and adequately fund the seed regulatory program.

The Colorado Department of Regulatory Agencies is persuaded that the applicants' proposal for increased regulation is well founded. The potential for harm to Colorado citizens from the discontinuance of proper administration and enforcement of the Colorado Seed Act is potentially wide spread and severe. Implementation of the proposed regulation would be a practical step toward ensuring the continuation of this long-standing public/private partnership in the vital agricultural sector. Registration of seed sellers and the payment of an annual fee would greatly assist in providing adequate support for the Colorado Seed Act and related laws with only a minimal regulatory and economic impact on the industry and Colorado consumers. Therefore, the Colorado Department of Regulatory Agencies recommends that the General Assembly adopt a system of registration for seed sellers in Colorado to be administered as part of the existing regulation of the seed industry under the Colorado Seed Act.

I. INTRODUCTION

The Colorado Department of Regulatory Agencies has conducted a review of the application for regulation through registration of seed sellers in Colorado. Under the Colorado Sunrise Act, 24-34-104.1 C.R.S., the applicant is required to show that the public will benefit from the proposed regulation according to the three criteria: 1) whether the unregulated practice of the occupation or profession clearly harms or endangers the health, safety or welfare of the public, and whether the potential for harm is easily recognizable and not remote or dependant on tenuous argument; 2) whether the public needs and can reasonably be expected to benefit from an assurance of initial and continuing professional or occupational competence; and 3) whether the public can be adequately protected by other means in a more cost effective manner.

The author of this report would like to acknowledge the assistance of the Colorado Department of Agriculture, the Seed Act Advisory Committee, the Colorado Attorney General's Office and the Extension Service of Colorado State University in helping to provide general information and specific data regarding the existing and proposed regulation of seed producers and distributors in Colorado.

Terminology

For purposes of this report, the following terms are used as defined below:

- 1) "Seed seller" means anyone who receives any form of compensation in return for providing seed to be used for growing crops or plants.
- 2) "Seed" means agricultural, vegetable, ornamental, shrub or tree seed for propagative purposes.
- 3) "Seed labeler" means a person who engages in the business of labeling seed for sale in Colorado and whose name and address appears on the analysis tag of said seed.
- 4) "Retail seed dealer" means any person who engages in the business of selling retail seed in Colorado.
- 5) "Conditioning" means drying, cleaning, scarifying, sizing, or any other operation which could change the purity or germination of seed.
- 6) "Custom seed conditioner" means any person in Colorado who engages in the business of conditioning seed or grain for planting whether said person uses a stationary or portable seed cleaner and where ownership of the seed or grain is

retained by the customer.

II. THE NEED FOR STRONGER REGULATION UNDER THE SEED ACT

INTRODUCTION

The key issue in any sunrise review is to determine whether significant harm to the public is posed by the unregulated practice of any occupational group seeking state regulation. The businesses of seed sellers in Colorado are already regulated by state and federal law but the occupation of seed seller, whether it be seed grower, seed conditioner or retail seed dealer, is not regulated. There are no occupational qualifications for any of these activities, nor are the applicants proposing the imposition of any occupational qualifications in order to practice or operate a business as a seed seller in Colorado. Rather, the applicants propose a minimally restrictive increase in state regulation through a requirement that all seed sellers must register annually with the Colorado Department of Agriculture and pay a registration fee. The purpose of this proposal is two-fold: 1) registration of seed sellers will allow the Department of Agriculture and other appropriate government agencies, such as the United States Department of Agriculture and the Extension Service of the Colorado State University, to be able to identify those persons and businesses active in the seed industry in Colorado. 2) The funds generated through the annual registration fee are intended to be used by the Colorado Department of Agriculture to assist in defraying the costs of administering and enforcing the Colorado Seed Act.

The goal of the applicants is not to unduly restrict the activities of seed sellers in Colorado by the imposition of educational or experiential requirements to practice. The applicants maintain that such formal requirements are not necessary in their field and would unnecessarily burden Colorado seed sellers without providing significant protection to the public. Instead, a basic registration program, which would only require that seed sellers identify themselves annually to the Colorado Department of Agriculture and pay a nominal fee for this registration, would adequately protect the public by supporting the seed regulatory program. The applicants point to the protections offered by the Colorado Seed Act and related acts which they feel must be maintained in order to protect Colorado citizens. As a recent example of the kinds of harm which can be visited upon Coloradans in the absence of an active seed regulatory program, the following case study is provided.

DISASTER IN THE COLORADO WHEAT INDUSTRY

In the fall of 1989, the Colorado Department of Agriculture convened a task force at the request of the Colorado Association of Wheat Growers and the Colorado Wheat Administrative Committee to investigate and to develop a strategy to resolve widespread weed infestations of Colorado winter wheat crops. Farmers across the state were experiencing infestations of weeds which were causing a 50% reduction in crop yields. As a result, direct crop losses of \$24 million and additional "spin-off losses" of another \$36 million to Colorado's rural economy were occurring. Finally, the contamination of Colorado wheat by these tenacious weed grasses, jointed goatgrass, cheatgrass (downybrone) and volunteer rye, served to significantly reduce the quality of Colorado wheat exports, the value of which is in excess of \$200 million annually.

Investigations conducted by the Colorado Wheat-Jointed Goatgrass Task Force, in cooperation with the Agricultural Statistics Service, sent questionnaires to 4,900 of Colorado's 14,000 wheat and barley producers in order to determine the extent and seriousness of the infestation. Responses from 44% of the sample showed that 44 of Colorado's 63 counties, "are infested with at least one of these three weeds. Forty-three counties report cheatgrass infestation, 30 counties have jointed goatgrass, and 26 counties have volunteer rye. Twenty-three counties report problems with all three weeds. The following tables show the significant spread of weed infestation in Colorado cropland and the direct economic impact due to the infestation.

EXTENT OF CROPLAND INFESTATION

	% of Cropland Infested	Cropland Acreage Infested
Cheatgrass	4.99	548,000
Jointed Goatgrass	4.25	467,000
Volunteer Rye	2.59	285,000

ANNUAL DIRECT ECONOMIC IMPACT DUE TO INFESTATION

	Bushels of Grain Lost	Value of Grain Lost
Cheatgrass	2,740,000	\$10,275,000
Jointed Goatgrass	2,335,000	\$ 8,756,000
Volunteer Rye	1,425,000	\$ 5,344,000
TOTALS	6,500,000	\$24,375,000

Scientists at Colorado State University estimated the impact of these infestations based on a probable yield loss of five bushels of grain per infested acre and a value of \$3.75 per bushel of grain. The Tables on the following pages and the map of Colorado which follows show the

annual direct economic loss per county caused by these weeds.

COUNTY		PERCENTAGE CROPLAND INFESTED			INFESTED ACRES				ESTIMATED LOSS 2/	
		Cheatgrass	Jointed Goatgrass	Volunteer Rye	Cheatgrass	Jointed Goatgrass	Volunteer Rye	TOTAL	Yield 5 Bu.	Dollars \$3.75
Adams	533,000	2.37	6.10	8.36	12,656	32,533	44,581	89,771	448,853	1,683,199
Alamosa	108,000	.82	.00	.00	888	0	0	888	4,440	16,650
Arapahoe	155,000	3.25	5.74	12.17	5,036	8,898	18,861	32,795	163,974	614,904
Archuleta	22,000	.34	.06	.00	74	12	0	86	431	1,615
Baca	680,000	2.01	.68	.21	13,671	4,620	1,397	19,688	98,442	369,156
Bent	103,000	.60	5.33	.00	622	5,490	0	6,112	30,561	114,603
Boulder	69,000	1.24	.00	20.26	852	0	13,981	14,833	74,166	278,124
Chaffee	20,000	.23	.00	.34	46	0	68	114	570	2,138
Cheyenne	368,000	3.61	4.81	.05	13,292	17,702	189	31,183	155,914	584,676
Clear Creek	0	.00	.00	.00	0	0	0	0	0	0
Conejos	126,000	.41	.00	.00	513	0	0	513	2,565	9,620
Costilla	52,000	1.65	.00	.15	857	0	78	935	4,676	17,535
Crowley	59,000	1.68	.00	.00	993	0	0	993	4,965	18,619
Custer	29,000	.00	.00	.00	.00	0	0	0	0	0
Delta	77,000	3.42	.04	.04	2,631	34	34	2,698	13,490	50,587
Denver	0	.00	.00	.00	0	0	0	0	0	0
Dolores	70,000	1.28	.00	.00	893	0	0	893	4,465	16,744
Douglas	32,000	1.55	.52	5.42	496	165	1,736	2,397	11,987	44,950
Eagle	26,000	2.14	.00	.00	557	0	0	557	2,787	10,450
Elbert	197,000	12.32	7.98	1.51	24,267	15,726	2,979	42,972	214,858	805,718
El Paso	90,000	.00	.00	.00	0	0	0	0	0	0
Fremont	20,000	.00	.00	.00	0	0	0	0	0	0
Garfield	78,000	8.81	.00	.00	6,870	0	0	6,870	34,352	128,821
Gilpin	1,000	.00	.00	.00	0	0	0	0	0	0
Grand	54,000	.00	.00	.00	0	0	0	0	0	0
Gunnison	47,000	.00	.00	.00	0	0	0	0	0	0
Hinsdale	2,000	.00	.00	.00	0	0	0	0	0	0

COUNTY		PERCENTAGE CROPLAND INFESTED			INFESTED ACRES				ESTIMATED LOSS 2/	
		Cheatgrass	Jointed Goatgrass	Volunteer Rye	Cheatgrass	Jointed Goatgrass	Volunteer Rye	TOTAL	Yield 5 Bu.	Dollars \$3.75
Huerfano	35,000	.00	.00	.00	0	0	0	0	0	0
Jackson	103,000	.00	.00	.00	0	0	0	0	0	0
Jefferson	21,000	7.55	11.32	1.89	1,585	2,377	396	4,358	21,792	81,722
Kiowa	501,000	1.20	1.00	.00	6,032	5,019	0	11,051	55,254	207,204
Kit Carson	860,000	7.71	3.94	.01	66,306	33,887	45	100,238	501,190	1,879,462
Lake	1,000	.00	.00	.00	0	0	0	0	0	0
La Plata	109,000	4.39	.03	.00	4,785	30	0	4,815	24,073	90,273
Larimer	142,000	12.19	.72	10.47	17,309	1,023	14,873	33,205	166,027	622,601
Las Animas	82,000	.00	12.85	.00	0	10,539	0	10,539	52,696	197,610
Lincoln	473,000	9.80	21.15	.80	46,367	100,042	3,795	150,204	751,019	2,816,321
Logan	557,000	5.13	8.45	1.85	28,573	47,063	10,320	85,957	429,785	1,611,692
Mesa	98,000	15.97	.00	.00	15,651	0	0	15,651	78,255	293,456
Mineral	2,000	.00	.00	.00	0	0	0	0	0	0
Moffat	125,000	2.37	.37	1.98	2,964	462	2,478	5,904	29,520	110,699
Montezuma	108,000	5.91	.38	.13	6,385	410	143	6,938	34,689	130,084
Montrose	104,000	4.03	.22	.00	4,192	227	0	4,418	22,092	82,843
Morgan	344,000	3.61	.40	3.59	12,415	1,379	12,351	26,146	130,728	490,229
Otero	98,000	14.79	10.92	10.54	14,498	10,703	10,334	35,535	177,673	666,272
Ouray	15,000	.00	.00	.00	0	0	0	0	0	0
Park	22,000	.00	.00	.00	0	0	0	0	0	0
Phillips	366,000	9.26	16.68	7.89	33,890	61,031	28,884	123,804	619,022	2,321,334
Pitkin	14,000	.00	.00	.00	0	0	0	0	0	0
Prowers	468,000	5.25	.27	.00	24,548	1,262	0	25,810	129,048	483,930
Pueblo	103,000	2.99	6.62	.00	3,078	6,822	0	9,901	49,503	185,637
Rio Blanco	60,000	8.33	.00	.00	5,000	0	0	5,000	25,000	93,750
Rio Grande	120,000	.63	.00	.00	761	0	0	761	3,805	14,270
Routt	115,000	.17	.00	.05	198	0	54	252	1,261	4,729

COUNTY	TOTAL CROPLAND ACRES 1/	PERCENTAGE CROPLAND INFESTED			INFESTED ACRES				ESTIMATED LOSS 2/	
		Cheatgrass	Jointed Goatgrass	Volunteer Rye	Cheatgrass	Jointed Goatgrass	Volunteer Rye	TOTAL	Yield 5 Bu.	Dollars \$3.75
Saguache	155,000	.32	.00	.00	502	0	0	502	2,509	9,410
San Juan	4,000	.00	.00	.00	0	0	0	0	0	0
San Miguel	22,000	25.50	1.65	.41	5,610	363	91	6,063	30,317	113,690
Sedgwick	223,000	1.92	4.29	.92	4,281	9,557	2,046	15,883	79,417	297,813
Summit	10,000	.00	.00	.00	0	0	0	0	0	0
Teller	3,000	.00	.00	.00	0	0	0	0	0	0
Washington	841,000	7.53	7.50	1.83	63,310	63,116	15,412	141,837	709,187	2,659,450
Weld	957,000	3.56	.27	9.68	34,048	2,593	92,623	129,264	646,320	2,423,701
Yuma	710,000	8.55	3.35	1.00	60,685	23,760	7,092	91,537	457,686	1,716,321
STATE	10,989,000	4.99	4.25	2.59	548,186	466,186	284,841	1,299,873	6,499,363	24,372,611
1/ 1987 Census of Agriculture										
2/ The five bushel loss per infested acre is based upon four years of documented research by CSU weed scientists.										

As shown by the data, the economic losses attributable to these weed infestations are spread across the state. However, the northeast quadrant of the state, which is one of the largest wheat growing areas in Colorado, as well as the northern front range, show the heaviest impact. "Counties hardest hit include: Lincoln (\$2.8 million), Washington (\$2.7 million), Weld (\$2.4 million), Phillips (\$2.3 million), Kit Carson (\$1.9 million), Yuma (\$1.7 million), Adams (\$1.7 million), and Logan (\$1.6 million). Five other counties report losses between \$500,000 and \$1,000,000 per year."

MAP of COLORADO

Colorado's problems with major infestations of jointed goatgrass, cheatgrass and volunteer rye in Colorado winter wheat are part of an ongoing problem across the country. For example, since it was first discovered in Geary County, Kansas, in 1937, jointed goatgrass has spread to most major wheat producing areas of the United States. Scientists find the problem of control of this weed particularly difficult since it is genetically similar to winter wheat and will hybridize with winter wheat. Therefore, attempts to selectively control jointed goatgrass in winter wheat with herbicides have met with failure. The essential reality of the problem is that control efforts must be ongoing, both in Colorado and across the country. As an example, in 1979, jointed goatgrass infested only ten of Colorado's wheat producing counties. The most recent survey indicated that 30 counties are now infested, a 200% increase. Finally, the spread of noxious weeds, such as those indicated in the Department of Agriculture's Task Force study, pose additional problems, since they are often hosts for insect pests. The three indicated weeds are alternate hosts for the Russian Wheat Aphid. Although this insect can be controlled through pesticide application, the presence of host weeds in farmers' fields and along county roadsides and state highways serves to multiply the problem.

TASK FORCE RESPONSE

The task force which analyzed the jointed goatgrass infestation included members of the Colorado legislature, representatives of the USDA, seed industry representatives, representatives from county extension agencies, the CSU Department of Agronomy and the Colorado Department of Agriculture. This task force determined that a program including prevention, education and roadside management; crop rotation and cultural practice; chemical resistant weed varieties; and effective biological control methods was necessary to begin to adequately address the problem posed by this weed infestation. In particular, the report issued by the task force in February, 1990, cited the need to strengthen the current Colorado Seed Law as one of the most important action items in addressing this problem. The report found:

"A major cause of the spread of jointed goatgrass in winter wheat is the presence of jointed goatgrass in wheat seed. Certified wheat seed is free from jointed goatgrass (and other weeds and contaminants), but only an estimated 5-15% of Colorado wheat producers use certified seed. Its use is low because of higher cost and the tradition of many wheat farmers of saving wheat seed from the past crop for this year's planting.

The Colorado Seed Law (C.R.S. 35-27) requires the inspection and testing of seed for sales to assure purchasers of truth in labeling and seed free from noxious weed seeds, such as jointed goatgrass. Enforcement is extremely difficult, however, particularly when many farmers sell saved seed to neighbors. The current law, administered by the Colorado Department of Agriculture, permits only criminal prosecution of offenders.

In practice, this is an ineffective deterrent, as the local district attorney or Attorney General's Office must get involved. Since these offices usually have a growing backlog of other cases, there is little incentive to take action.

The Colorado Seedsmen's Association is currently working with the Colorado Department of Agriculture to revise the Colorado Seed Law. The key recommended change would provide the Colorado Department of Agriculture with the latitude to assess violators penalties and fees, short of criminal prosecution, including farmers who sell contaminated seed to neighbors or others."

The need for cooperative action to appropriately address a difficult problem of the magnitude of the weed infestation in Colorado winter wheat is well illustrated by the task force findings. Not only are the cooperative efforts of government, industry, farmers and private associations necessary, several different approaches must be taken in combination in order to effectively attack the problem. A key element is the effective administration and enforcement of the Colorado Weed Law (C.R.S. 35-5) and the Colorado Seed Law.

In the context of this sunrise review, it is the position of the applicants that registration of seed sellers in Colorado will allow the Colorado Department of Agriculture to identify individuals and businesses active in this industry, which will result in dissemination of educational materials and better monitoring of seed industry practices. Finally, charging a fee for registration will aid in supporting the administration and enforcement of the Seed Act.

III. CURRENT REGULATION AND PROPOSALS FOR REFORM

COLORADO LAW MIRRORS FEDERAL ACT

The State of Colorado has regulated seed production since the 27th General Assembly enacted the Seed Inspection and Registration Law in 1929. Since its inception, this program has utilized the services of the Experiment Station and the Colorado State Seed Laboratory at Colorado State University. The Colorado Seed Act itself dates from 1943 and was last revised in any significant way in 1982. The Colorado Department of Agriculture is responsible for the implementation of the Seed Act, but with a General Fund budget of only about \$50,000 per year and only one-half of a full-time position as staff, the program is very small.

Colorado law mirrors the Federal Seed Act, 7USCA 1551-1610, which is administered by the United States Department of Agriculture. As with many other federal programs that have state counterparts, the federal government relies upon each state to take the lead in the local administration and enforcement of seed regulation. Often, federal government involvement in this area is limited to major problems which affect several states, thereby attracting the attention of the USDA. However, even when widespread problems occur, there is no guarantee that the federal government will intervene.

For example, the applicants point to a situation which occurred in 1987 and 1988, involving the sale of inferior grass seed by the Superior Seed Company of Pasco, Washington, to farmers in eastern Colorado and several other plains states. Although farmers and consumers complained to state and federal government agencies in Colorado and in other states, the illegal activities of Superior Seed continued. Apparently, district attorneys in Colorado with jurisdiction were reluctant to spend time prosecuting the case because the criminal penalties for violations of the existing Seed Act were so small; \$200 for the first offense and \$500 each for subsequent offenses. They also maintain that the way the current law is written prevents them from successfully prosecuting offenders. Finally, the problem was resolved in part because the Department of Agriculture in the State of South Dakota filed fraud and mislabeling actions against Superior Seed Company. Subsequently, Superior Seed filed for bankruptcy in 1989 and the company was later liquidated.

Another important federal act which is important to the seed industry is the Plant Variety Protection Act which was passed in late 1970, (7USCA 2323-2583). Although this law is voluntary and has no counterpart on the state level, it does serve to provide plant breeders and those who experiment with the development of new plant varieties with a degree of protection similar to a patent or copyright. The PVPA is intended to allow plant breeders to protect the varieties of plants they develop and thus enable them to recover their research costs. In this way, the Act is intended to encourage the development of new varieties of plants.

Plant variety protection is also offered to plant breeders and developers under the provisions of title 5 of the Federal Seed Act. "A variety protected in this manner may be sold by variety name only as a class of certified seed. Sale of uncertified seed by variety name is in violation of both the owner's rights and federal and state seed laws. Most state institutions and some private companies have chosen to protect their varieties under this option." Violations of the Federal Seed Act may be prosecuted by either federal or state governments. Any violation of the Act is a misdemeanor which is punishable on a first violation by a maximum fine of \$1,000. Subsequent violations are subject to a maximum \$2,000 fine.

Maintenance of pure varieties of seed is important for both scientific and economic reasons. Certification of seed purity is commonly used to maintain a pedigree on seed of a specific variety. According to the Seed Certification Service at the Colorado State University, ***"Certified seed varieties result from years of careful effort on the part of plant breeders and growers to develop superior varieties. Varietal purity is the first consideration in seed certification, but other factors, such as weeds, diseases, viability and mechanical purity are also very important. One of the most effective methods of preventing the wider distribution of weeds is to plant weed-free seed. Adverse effects of plant diseases can be reduced by planting clean seed from disease-free fields. Properly cleaned and graded seed is easier to plant and results in uniform stands. Certified seed gives farmers assurance that they are getting clean, pure, high-germinating seed."***

Once a superior variety is developed, painstaking effort must be made to keep it pure and produce it in quantities for the good of all farmers. The production of certified seed in Colorado is a voluntary, cooperative effort of seed growers and approved conditioners. The program is not restrictive; it is open to all who wish to meet the established standards. However, it is not the purpose of seed certification to have a large percentage of farmers producing certified seed, but to have an adequate quantity of seed marketed in the areas where it is needed."

THE COLORADO SEED ACT AND PROPOSALS FOR REFORM

The Seed Act Advisory Committee of the Colorado Department of Agriculture has spent several years in discussion and has prepared a reorganized and strengthened Colorado Seed Act, which is attached to this report as Appendix A. This proposal was submitted to the Colorado General Assembly in 1992 as SB 162 and initially passed the Senate Agriculture and Appropriations Committees before being postponed indefinitely on May 4, 1992. The purpose of this postponement was to allow the proposals for registration of Colorado seed sellers to be heard by the Joint Legislative Sunrise/Sunset Committee under the Sunrise Law and to allow additional time for the seed industry to rally support for the revised act.

There appears to be general agreement that the funding and staffing of the existing Colorado Seed Act is inadequate. The funding level for this program has been reduced in the last several years from a high of \$150,000 in 1985 to its current level of \$50,000 in fiscal year 1992-1993. The reason for these reductions in general fund appropriations has been competition with other state programs for scarce general fund monies.

It is also generally agreed that the current cooperative administration of the Colorado Seed Act is appropriate. Rather than relying exclusively on state employees to administer and enforce the Act, the Colorado Department of Agriculture has established a working partnership with the Experiment Station and the Colorado State Seed Laboratory of Colorado State University and various industry groups. The former conducts tests of seeds to assure their purity and the latter provide information to seed sellers and support the administration of the Seed Law. The Colorado Seed Growers Association has even been authorized by law to carry out the work of certifying seed in the state. The Association monitors production and makes sure that legal standards are followed. The Association then issues labels and bulk sales certificates to ensure proper labeling of seed shipments.

Due to the cooperative nature of the administration of the Seed Act in Colorado, and due to its historically low budget and staffing level, significant enforcement actions are relatively uncommon. Another factor which accounts for this situation is the weak fining authority provided in the current Act.

Every year, inspectors from the Colorado Department of Agriculture collect samples of seeds pursuant to the Seed Act for testing to assure their purity. In the recent past, six to seven hundred seed samples per year were taken by the Department of Agriculture to try to get a representative cross sample of seeds being sold in the state in order to ensure seed quality under the Seed Act. Today, however, only about 200 samples per year are being taken, a number which is considered to be inadequate for any purpose but the most rudimentary enforcement of the law. Indeed, approximately ten years ago, budgetary constraints prevented any samples from being taken by the Colorado Department of Agriculture. Active seed sellers in Colorado still recall the increase in inferior quality seed and weed contamination which resulted from the failure to test in that year.

Current Colorado Law requires that all seed "offered or exposed for sale, bartered or distributed within this state for seeding purposes" must be labeled. Fulfillment of the labeling requirement, such as kind and variety of seed, origin, weight, purity, percentage of weed seed and percentage of germination, practically require that the seed seller test the seed in order to determine this information accurately.

Seed shipped into the state from beyond Colorado's borders must also be labeled and tested in like manner as seed which is produced within the state. Within the industry, it is generally conceded that the largest and best known seed production firms, such as Pioneer Seed Company, headquartered in Iowa or Agripro Company, headquartered in Berthoud, Colorado are most likely to self-enforce the provisions of the Colorado Seed Act in order to ensure the maximum marketability of their product. Smaller seed sellers and individual farmers may be less likely to rigorously self-enforce the standards of the law, although problems have occurred with the larger seed companies as well.

The substantial revision of the Colorado Seed Act, which is set out in Appendix A, uses the existing act as its basis. The proposed act adds definitions and more clearly defines exemptions from the law, as well as providing a legislative declaration which is not found in the current act. In addition to clarifying labeling requirements for seed sold within the state and imposing a two year recordkeeping requirement in conjunction with seed labeling, the new act essentially retains the allowable tolerances for seed quality which are found in the existing law.

The key element of the proposed act is stronger enforcement authority. In particular, the Colorado Department of Agriculture would be empowered to impose fines of up to \$2,500 per offense and to revoke registrations to operate as a seed seller in the event of significant violations of the law. This fining authority essentially mirrors that of the Federal Seed Act, which contains a maximum fine of \$2,000 per offense. In addition, the powers of the Agriculture Commissioner to subpoena books and records, embargo tainted seed and require cooperation by local district attorneys and the Colorado Attorney General's Office have been updated and consolidated. Private enforcement actions are also encouraged and formalized under the proposed law. Arbitration of complaints against seed sellers would be required if consumers receive notice via label or invoice, and would be heard by an arbitration council composed of five members appointed by the Commissioner of Agriculture.

The second major change proposed in the Colorado Seed Law is to require registration by all seed sellers. This would allow the Department of Agriculture to identify Colorado seed sellers, which would ease enforcement of the law. Of equal importance, it would allow a more stable funding base and enable the Department to expand its administrative and enforcement activities. The proposal suggests registration fees ranging from a maximum of \$300 per year for seed labeling and conditioning companies to a maximum of \$75 per year for farmers who sell seed or for retail seed dealers.

Finally, the third major change proposed is to place in statute, the Seed Act Advisory Committee which is currently functioning to provide information and advice to the Colorado Department of Agriculture from the seed production industry. The proposed advisory committee would be generally representative of the industry and would receive no compensation. Actual expenses would be reimbursed and the committee would be limited to no more than six members.

The proposed seed act represents a significant strengthening and expansion of the current seed act. There is extensive agreement among the government agencies, the industry and the experts in the seed production field that the current Colorado Seed Act needs these revisions if it is to be effective. They maintain that money spent on ineffective regulation is money which is wasted. The broader powers and new funding represented by the proposed seed act are expected to provide an adequate level of regulation of the industry at a reasonable cost.

IV. RECOMMENDATIONS

APPLICATION OF SUNRISE CRITERIA

This sunrise application presents an interesting question: Should a form of professional regulation, albeit the least intrusive form, be imposed on an occupational group primarily for the purpose of assuring the continuation of a state government program that is demonstrably beneficial to Colorado citizens? The applicants argue: " The agricultural, commercial and residential buyers of seed will be protected because the Act ensures the integrity of the labeling: pure seed, no noxious weed seed, high levels of germination and variety identification." Without the Act, they argue this protection would not exist, whether or not seed sellers were licensed, certified or registered in some manner. The applicants maintain that even though the current act is under-funded and under-manned, its existence provides a framework for addressing problems in the seed industry and its revitalization would be a significant step toward assuring seed quality to Colorado consumers.

The willingness of the members of the seed industry to essentially tax themselves, via a fee-for-registration system in order to support the Colorado Seed Act, is noteworthy. Moreover, there are many precedents in Colorado regulatory law which support the principle that the cost of regulation should be borne by the members of the industry who are benefitted by it and whose occupation makes the regulation necessary. For example, the Colorado Nursery Act requires that nurseries register with the Department of Agriculture and pay a fee which, in turn, goes to support the operations of the Colorado nursery regulatory program. That program, like the Colorado Seed Act, is an essential part of a public/private partnership which includes consumers, industry members, private associations and government agencies as well as a variety of state and federal laws, the benefits of which have been well established over time. The interdependency of these programs with their constituents is generally not a problem. As long as these close relationships do not result in lax law enforcement, they offer economies and efficiencies which allow a reasonable level of law enforcement at a relatively low cost. In neither the seed regulatory program or the nursery regulatory program are there any indications that this public/private partnership is in any way hampering law enforcement.

Based on the information gathered in the preparation of this report, the Department of Regulatory Agencies makes the following findings:

1. The existing Colorado Seed Act, in combination with other Colorado and federal laws, sets up a basic framework for regulation of the seed industry which is beneficial to Colorado citizens and the Colorado economy.
2. The current level of administration and enforcement of the Colorado Seed Act is below what is necessary to ensure quality seed and thereby protect the public.

3. The consortium of government agencies, private associations, firms and individuals that are working together to improve administration of the Colorado Seed Act are in substantial agreement that the Act needs to be revised and strengthened in order to carry out its purpose effectively.
4. The proposed strengthening and restructuring of the Act as set out in SB 162, (Appendix A), would significantly improve the Colorado Seed Act. As part of this process, the industry is generally willing to tax itself in order to provide the necessary support to pay for the cost of implementing this program.
5. The level of occupational regulation proposed by the applicants is the minimum necessary to identify Colorado seed sellers and levy a basic fee to support this program.
6. The proposed revision and reenactment of the Colorado Seed Act can be modified to ensure that the minimal registration requirement proposed by the applicants at a reasonable fee level is implemented. The proposal should clearly state, however, that no occupational qualifications, such as educational, experiential or testing requirements shall be imposed upon Colorado seed sellers as part of the registration provisions of the Colorado Seed Act unless specifically directed by the General Assembly.

Based on these findings, the Colorado Department of Regulatory Agencies makes the following recommendations:

RECOMMENDATION 1: **IMPLEMENT SEED SELLER REGISTRATION.**

The General Assembly should implement a system of registration for Colorado seed sellers. No occupational qualifications, such as educational, experiential or testing requirements, should be imposed as part of this registration system without the express direction of the General Assembly.

RECOMMENDATION 2: **IMPLEMENT REENACTMENT OF THE COLORADO SEED ACT.**

The General Assembly should repeal and reenact the Colorado Seed Act along the lines proposed by the Seed Act Advisory Committee in cooperation with the Colorado Department of Agriculture as set out in Appendix A of this report. The new act should include the registration of seed sellers as recommended above.