

## CHAPTER 74

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**AGRICULTURE**


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**HOUSE BILL 19-1114**

BY REPRESENTATIVE(S) Catlin and Valdez D., Baisley, Beckman, Bird, Bockenfeld, Buck, Buckner, Buentello, Caraveo, Carver, Coleman, Cutter, Duran, Exum, Froelich, Galindo, Garnett, Gonzales-Gutierrez, Gray, Hansen, Herod, Hooton, Jackson, Jaquez Lewis, Kennedy, Kipp, Kraft-Tharp, Landgraf, Lewis, Liston, Lontine, McCluskie, McKean, McLachlan, Melton, Michaelson Jenet, Mullica, Pelton, Ransom, Rich, Roberts, Saine, Sandridge, Snyder, Soper, Tipper, Titone, Valdez A., Williams D., Wilson, Becker, Arndt, Humphrey;  
also SENATOR(S) Danielson and Cooke, Coram, Crowder, Donovan, Fields, Gardner, Ginal, Gonzales, Hisey, Rodriguez, Sonnenberg, Tate, Garcia.

**AN ACT**

**CONCERNING THE IMPLEMENTATION UNDER STATE LAW BY THE COMMISSIONER OF AGRICULTURE  
OF FEDERAL PRODUCE SAFETY STANDARDS FOR FARMS.**

*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1.** In Colorado Revised Statutes, 35-1-104, **amend** (1)(b) as follows:

**35-1-104. Functions, powers, and duties.** (1) The department has and shall exercise the following functions, powers, and duties:

(b) To perform all regulatory and inspection services relating to agriculture, except agricultural education and research and those regulatory functions relating primarily to the control of milk or milk products ~~or to public health~~ or assigned by law to other state agencies;

**SECTION 2.** In Colorado Revised Statutes, **add** article 77 to title 35 as follows:

**ARTICLE 77**  
**Produce Safety**

**35-77-101. Legislative declaration.** THIS ARTICLE 77 IS ADOPTED BY THE GENERAL ASSEMBLY WITH THE INTENTION THAT THE COMMISSIONER WILL IMPLEMENT AND ENFORCE 21 CFR 112, CONCERNING PRODUCE SAFETY, UNDER A COOPERATIVE AGREEMENT WITH THE FDA, AND IN LIEU OF FEDERAL ENFORCEMENT

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*Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.*

BY THE FDA. THE COMMISSIONER MAY SEEK TO ENTER INTO A COOPERATIVE AGREEMENT WITH THE FDA WHEREBY THE COMMISSIONER WILL ASSUME ENFORCEMENT AUTHORITY AND RECEIVE FUNDING FROM THE FDA. THE FIRST AGREEMENT SHOULD EXTEND FOR FIVE YEARS. IF THE AGREEMENT IS NOT RENEWED FOR A SECOND OR SUBSEQUENT PERIOD, THE COMMISSIONER WILL CEASE IMPLEMENTING AND ENFORCING THIS ARTICLE 77.

**35-77-102. Definitions.** AS USED IN THIS ARTICLE 77, UNLESS THE CONTEXT OTHERWISE REQUIRES:

- (1) "COMMISSIONER" MEANS THE COMMISSIONER OF AGRICULTURE.
- (2) "COVERED ACTIVITY" HAS THE SAME MEANING AS SET FORTH IN 21 CFR 112.3.
- (3) "DEPARTMENT" MEANS THE DEPARTMENT OF AGRICULTURE.
- (4) "FARM" HAS THE SAME MEANING AS SET FORTH IN 21 CFR 112.3.
- (5) "FDA" MEANS THE UNITED STATES FOOD AND DRUG ADMINISTRATION.
- (6) "PRODUCE" HAS THE SAME MEANING AS SET FORTH IN 21 CFR 112.3.

**35-77-103. Cooperative agreement - federal funding - applicability - rules.**

(1) THE COMMISSIONER MAY SEEK, ACCEPT, AND EXPEND FEDERAL MONEY FOR THE PURPOSES OF THIS ARTICLE 77. THE COMMISSIONER MAY ENTER INTO A COOPERATIVE AGREEMENT WITH THE FDA TO IMPLEMENT 21 CFR 112 UNDER STATE LAW AND TO SEEK FEDERAL MONEY.

(2) IF THE COMMISSIONER DOES NOT RECEIVE ADEQUATE MONEY UNDER SUBSECTION (1) OF THIS SECTION TO IMPLEMENT THIS ARTICLE 77, THE COMMISSIONER NEED NOT IMPLEMENT THIS ARTICLE 77 OR MAY CEASE IMPLEMENTING THIS ARTICLE 77. IF THE COMMISSIONER DOES NOT IMPLEMENT THIS ARTICLE 77 OR CEASES IMPLEMENTING THIS ARTICLE 77, THE COMMISSIONER SHALL PROMULGATE A RULE PROVIDING PUBLIC NOTICE THAT THIS ARTICLE 77 IS NOT BEING IMPLEMENTED AND THAT A FARM NEED NOT REGISTER UNDER THIS ARTICLE 77.

**35-77-104. Registration required - rules.** (1) EXCEPT AS PROVIDED IN SECTION 35-77-103, A FARM, INCLUDING A FARM THAT IS INCORPORATED INTO ANOTHER BUSINESS, SHALL REGISTER WITH THE COMMISSIONER IF THE FARM CONDUCTS COVERED ACTIVITY AND THE PRODUCE SOLD DURING THE PREVIOUS THREE YEARS BY THE FARM HAS AN AVERAGE ANNUAL MONETARY VALUE OF MORE THAN TWENTY-FIVE THOUSAND DOLLARS, AS ADJUSTED FOR INFLATION BY THE FDA UNDER 21 CFR 112, USING 2011 AS THE BASELINE YEAR FOR CALCULATING THE ADJUSTMENT. THE AMOUNT THAT TRIGGERS REGISTRATION IS CALCULATED ON A ROLLING BASIS.

(2) EACH TIME THE FDA CHANGES THE AMOUNT OF SALES THAT TRIGGERS REGISTRATION, THE COMMISSIONER SHALL PROMULGATE A RULE SETTING FORTH THE NEW AMOUNT OF SALES THAT TRIGGERS REGISTRATION.

**35-77-105. Produce safety - rules.** THE COMMISSIONER SHALL PROMULGATE

RULES ADOPTING 21 CFR 112 FOR PRODUCE SAFETY STANDARDS FOR FARMS.

**35-77-106. Commissioner duties and authority - rules.** (1) THE COMMISSIONER MAY:

(a) ADOPT ANY RULE REASONABLY NECESSARY TO IMPLEMENT THIS ARTICLE 77;  
AND

(b) ADMINISTER AND ENFORCE THIS ARTICLE 77 AND ANY RULES ADOPTED UNDER THIS ARTICLE 77.

(2) IN ACCORDANCE WITH ARTICLE 4 OF TITLE 24, THE COMMISSIONER SHALL CONDUCT HEARINGS REQUIRED BY THIS ARTICLE 77 AND, AT THE COMMISSIONER'S DISCRETION, USE ADMINISTRATIVE LAW JUDGES TO CONDUCT THE HEARINGS.

**35-77-107. Investigation - access to records and facilities.** (1) THE COMMISSIONER MAY CLOSE TO PUBLIC INSPECTION INVESTIGATIONS, COMPLAINTS OF RECORD, AND FARM RECORDS; EXCEPT THAT:

(a) THE PERSON IN INTEREST, AS DEFINED IN SECTION 24-72-202, MAY ACCESS THESE RECORDS; OR

(b) THE RECORDS MAY BE ACCESSED IN ACCORDANCE WITH A COURT ORDER.

(2) (a) DURING REGULAR BUSINESS HOURS, A FARM SHALL GIVE THE COMMISSIONER ACCESS, UPON THE COMMISSIONER GIVING THE FARM WRITTEN NOTICE AND OBTAINING CONSENT OR AN ADMINISTRATIVE SEARCH WARRANT, TO REAL PROPERTY USED FOR, ANY BUILDING USED FOR, OR ANY FACILITY USED FOR ACTIVITIES REGULATED UNDER THIS ARTICLE 77 IF THE ACCESS IS FOR THE PURPOSE OF IMPLEMENTING OR ENFORCING THIS ARTICLE 77 OR ANY RULE ADOPTED UNDER THIS ARTICLE 77.

(b) DURING REGULAR BUSINESS HOURS, A FARM SHALL GIVE THE COMMISSIONER, UPON THE COMMISSIONER GIVING THE FARM WRITTEN NOTICE, ACCESS TO ALL RECORDS REQUIRED TO BE KEPT BY RULE OF THE COMMISSIONER AND SHALL ALLOW THE COMMISSIONER TO MAKE COPIES OF THE RECORDS IF THE ACCESS OR COPYING IS FOR THE PURPOSE OF IMPLEMENTING OR ENFORCING THIS ARTICLE 77 OR ANY RULE ADOPTED UNDER THIS ARTICLE 77.

(3) THE COMMISSIONER MAY MAKE ANY INVESTIGATION NECESSARY TO ENSURE COMPLIANCE WITH THIS ARTICLE 77.

(4) (a) THE COMMISSIONER MAY:

(I) ADMINISTER OATHS AND TAKE STATEMENTS;

(II) ISSUE SUBPOENAS REQUIRING THE ATTENDANCE OF WITNESSES BEFORE THE COMMISSIONER AND COMPEL THE WITNESSES TO DISCLOSE ALL KNOWN FACTS CONCERNING THE MATTER UNDER INVESTIGATION; AND

(III) REQUIRE THE PRODUCTION OF BOOKS, DOCUMENTS, ITEMS, OR INSTRUMENTS.

(b) UPON THE FAILURE OR REFUSAL OF A WITNESS TO OBEY A SUBPOENA COMPELLING THE WITNESS TO APPEAR AND TESTIFY OR TO PRODUCE DOCUMENTARY EVIDENCE, THE COMMISSIONER MAY PETITION THE DISTRICT COURT TO COMPEL THE WITNESS TO OBEY THE SUBPOENA. UPON A PROPER SHOWING, THE COURT MAY ENTER AN ORDER REQUIRING COMPLIANCE WITH THE SUBPOENA. FAILURE TO OBEY THE COURT'S ORDER IS PUNISHABLE AS A CONTEMPT OF COURT.

**35-77-108. Cease-and-desist orders.** (1)(a) THE COMMISSIONER MAY ISSUE AN ORDER TO CEASE AND DESIST FROM VIOLATING THIS ARTICLE 77 IF THE COMMISSIONER DETERMINES, BASED UPON CREDIBLE EVIDENCE, THAT:

(I) A PERSON IS VIOLATING THIS ARTICLE 77 OR A RULE ADOPTED UNDER THIS ARTICLE 77; OR

(II) A PERSON IS VIOLATING SECTION 35-77-104.

(b) TO ISSUE A CEASE-AND-DESIST ORDER, THE COMMISSIONER MUST SET FORTH IN THE ORDER THE STATUTES OR RULES ALLEGED TO HAVE BEEN VIOLATED, THE FACTS ALLEGED TO CONSTITUTE THE VIOLATION, AND A REQUIREMENT THAT THE ALLEGED VIOLATIONS CEASE AND DESIST.

(c) TO PROTEST A CEASE-AND-DESIST ORDER, A PERSON MUST REQUEST WITHIN THIRTY DAYS AFTER THE DATE OF THE ORDER A HEARING ON THE QUESTION OF WHETHER THE PERSON HAS VIOLATED THIS ARTICLE 77 OR A RULE ADOPTED UNDER THIS ARTICLE 77. IF SO REQUESTED, THE COMMISSIONER SHALL HOLD A HEARING.

(2) A PERSON AGGRIEVED BY A CEASE-AND-DESIST ORDER THAT HAS BECOME FINAL MAY SEEK JUDICIAL REVIEW OF THE ORDER.

(3)(a) IF A PERSON FAILS TO COMPLY WITH A CEASE-AND-DESIST ORDER WITHIN TWENTY-FOUR HOURS AFTER BEING SERVED WITH THE ORDER, THE COMMISSIONER MAY BRING A SUIT FOR A TEMPORARY RESTRAINING ORDER AND INJUNCTIVE RELIEF TO PREVENT ANY FURTHER VIOLATION OF THIS ARTICLE 77 OR A RULE ADOPTED UNDER THIS ARTICLE 77.

(b) IF THE SUBJECT OF A CEASE-AND-DESIST ORDER REQUESTS THAT THE CEASE-AND-DESIST ORDER BE STAYED PENDING AN APPROVAL OF THE ORDER, A COURT SHALL NOT STAY THE CEASE-AND-DESIST ORDER UNTIL AFTER A HEARING HAS BEEN HELD AT WHICH BOTH PARTIES HAVE HAD AN OPPORTUNITY TO APPEAR.

(c) A COURT SHALL GIVE PREFERENCE TO MATTERS BROUGHT BEFORE THE COURT UNDER THIS SECTION OVER OTHER MATTERS ON THE CALENDAR OF THE COURT.

**35-77-109. Unlawful acts.** (1) UNLESS AUTHORIZED BY LAW, IT IS UNLAWFUL FOR ANY PERSON TO:

(a) REFUSE TO COMPLY WITH A CEASE-AND-DESIST ORDER ISSUED UNDER SECTION 35-77-108; OR

(b) MAKE A MATERIAL MISSTATEMENT IN A REGISTRATION OR TO THE COMMISSIONER OR THE DEPARTMENT DURING AN OFFICIAL INVESTIGATION.

(2) IT IS UNLAWFUL FOR AN EMPLOYEE, OFFICIAL OF THE DEPARTMENT, OR PERSON DESIGNATED BY THE COMMISSIONER TO:

(a) USE FOR PRIVATE ADVANTAGE ANY INFORMATION DERIVED FROM REPORTS OR RECORDS SUBMITTED TO THE DEPARTMENT IN ACCORDANCE WITH THIS ARTICLE 77;

(b) DISCLOSE ANY INFORMATION DERIVED FROM REPORTS OR RECORDS SUBMITTED TO THE DEPARTMENT IN ACCORDANCE WITH THIS ARTICLE 77; EXCEPT THAT THE INFORMATION MAY BE DISCLOSED TO:

(I) A COURT OF THIS OR OTHER STATES; OR

(II) PEOPLE WHO ARE AUTHORIZED TO RECEIVE THE INFORMATION, REPORTS, OR RECORDS.

**35-77-110. Administrative penalties.** (1) (a) A FARM THAT VIOLATES THIS ARTICLE 77 OR A RULE ADOPTED UNDER THIS ARTICLE 77 IS SUBJECT TO AN ADMINISTRATIVE PENALTY, AS DETERMINED BY THE COMMISSIONER.

(b) TO IMPOSE AN ADMINISTRATIVE PENALTY, THE COMMISSIONER MUST CONSIDER THE SEVERITY OF THE VIOLATION, THE AMOUNT OF HARM CAUSED BY THE VIOLATION, THE PRESENCE OR ABSENCE OF A PATTERN OF SIMILAR VIOLATIONS BY THE FARM, AND THE EFFECT OF THE PROPOSED PENALTY ON THE ABILITY OF THE FARM TO CONTINUE TO CONDUCT BUSINESS.

(c) THE COMMISSIONER SHALL NOT IMPOSE AN ADMINISTRATIVE PENALTY THAT EXCEEDS TWO THOUSAND FIVE HUNDRED DOLLARS PER VIOLATION.

(2) TO IMPOSE AN ADMINISTRATIVE PENALTY, THE COMMISSIONER MUST GIVE THE ALLEGED VIOLATOR NOTICE AND AN OPPORTUNITY FOR A HEARING IN ACCORDANCE WITH ARTICLE 4 OF TITLE 24.

(3) IF A FARM FAILS TO PAY ANY PORTION OF AN ADMINISTRATIVE PENALTY IMPOSED IN ACCORDANCE WITH THIS SECTION, THE COMMISSIONER MAY BRING SUIT TO RECOVER THE PENALTY. IN ANY ACTION BROUGHT UNDER THIS SECTION, THE COMMISSIONER MAY, IF SUCCESSFUL, RECOVER COSTS AND REASONABLE ATTORNEY FEES.

**35-77-111. Repeal of article.** (1) THIS ARTICLE 77 IS REPEALED, EFFECTIVE SEPTEMBER 1, 2034. BEFORE THE REPEAL, THIS ARTICLE 77 IS SCHEDULED FOR REVIEW IN ACCORDANCE WITH SECTION 24-34-104.

(2) THIS ARTICLE 77 WILL BE REPEALED IF THE COMMISSIONER PROMULGATES A RULE PROVIDING PUBLIC NOTICE THAT THIS ARTICLE 77 IS NOT BEING IMPLEMENTED. THE COMMISSIONER SHALL NOTIFY THE REVISOR OF STATUTES IN WRITING OF THE DATE WHEN THE CONDITION SPECIFIED IN THIS SUBSECTION (2) HAS OCCURRED BY E-MAILING THE NOTICE TO REVISOROFSTATUTES.GA@STATE.CO.US. THIS ARTICLE 77 IS REPEALED EFFECTIVE UPON THE DATE IDENTIFIED IN THE NOTICE OR, IF THE NOTICE DOES NOT SPECIFY THAT DATE, UPON THE DATE OF THE NOTICE TO THE REVISOR OF STATUTES.

**SECTION 3.** In Colorado Revised Statutes, 24-34-104, **add** (35) as follows:

**24-34-104. General assembly review of regulatory agencies and functions for repeal, continuation, or reestablishment - legislative declaration - repeal.**

(35) (a) THE FOLLOWING AGENCIES, FUNCTIONS, OR BOTH, ARE SCHEDULED FOR REPEAL ON SEPTEMBER 1, 2034:

(1) THE REGULATION OF PRODUCE SAFETY ON FARMS BY THE COMMISSIONER OF AGRICULTURE IN ACCORDANCE WITH ARTICLE 77 OF TITLE 35.

(b) THIS SUBSECTION (35) IS REPEALED, EFFECTIVE SEPTEMBER 1, 2036.

**SECTION 4. Act subject to petition - effective date - applicability.** (1) This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 2, 2019, if adjournment sine die is on May 3, 2019); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2020 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

(2) This act applies to acts committed on or after the applicable effective date of this act.

Approved: April 4, 2019