

CHAPTER 208

GOVERNMENT - STATE

HOUSE BILL 98-1408

BY REPRESENTATIVES Entz, George, Grossman, Nichol, Spradley, and Young;
also SENATOR Ament.

AN ACT

CONCERNING THE HANDLING OF SUBSTANCES USED IN AGRICULTURAL PRODUCTION.

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

SECTION 1. 24-4-103 (4), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

24-4-103. Rule-making - procedure. (4) (a.5) ANY STUDY OR OTHER DOCUMENTATION UTILIZED BY AN AGENCY AS THE BASIS OF A PROPOSED RULE SHALL BE A PUBLIC DOCUMENT IN ACCORDANCE WITH THE PROVISIONS OF PART 2 OF ARTICLE 72 OF THIS TITLE AND SHALL BE OPEN FOR PUBLIC INSPECTION. ALL INFORMATION, INCLUDING, BUT NOT LIMITED TO, RESEARCH, DATA, PUBLISHED PAPERS, AND DOCUMENTS, USED BY THE AGENCY IN THE DEVELOPMENT OF A PROPOSED RULE SHALL BE A PUBLIC DOCUMENT IN ACCORDANCE WITH THE PROVISIONS OF PART 2 OF ARTICLE 72 OF THIS TITLE AND SHALL BE OPEN FOR PUBLIC INSPECTION.

SECTION 2. 35-9-118, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

35-9-118. Powers and duties of the commissioner. (2.5) (a) THE COMMISSIONER SHALL EXPEDITE, TO THE EXTENT PRACTICABLE AND EFFICIENT, THE PROCESSING OF APPLICATIONS FOR THE ISSUANCE OF A SPECIAL LOCAL NEEDS REGISTRATION MADE PURSUANT TO SECTION 24 (c) OF THE "FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT", AS AMENDED.

(b) NOTWITHSTANDING SECTION 35-9-113(1)(b)(IV)(D), THE COMMISSIONER SHALL NOT DENY REGISTRATION OF A PESTICIDE PRODUCT PURSUANT TO THIS ARTICLE FOR WHICH A SPECIAL LOCAL NEEDS REGISTRATION HAS BEEN ISSUED PURSUANT TO

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

SECTION 24 (c) OF THE "FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT", AS AMENDED, FOR THE REASON THAT A CONTRACT BETWEEN A GROWER OR GROWER'S GROUP AND A MANUFACTURER OR SELLER INCLUDES CONTRACTUAL PROVISIONS LIMITING LIABILITY OF THE MANUFACTURER OR SELLER.

SECTION 3. Part 1 of article 20 of title 42, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

42-20-108.5. Materials used for agricultural production - exemption - legislative declaration. (1) THE GENERAL ASSEMBLY HEREBY FINDS, DETERMINES, AND DECLARES THAT THE FEDERAL GOVERNMENT HAS EXTENDED FEDERAL HAZARDOUS MATERIALS RULES TO AGRICULTURAL PRODUCERS IN 49 C.F.R. 173.5 IN A WAY THAT WOULD BE UNDULY BURDENSOME TO AGRICULTURE WITHOUT CONTRIBUTING SIGNIFICANTLY TO PUBLIC SAFETY. THE GENERAL ASSEMBLY FURTHER FINDS, DETERMINES, AND DECLARES THAT THE FEDERAL RULES GIVE EXPLICIT AUTHORITY TO THE STATES TO EXEMPT THEMSELVES FROM THE FEDERAL RULES, AND THAT THIS SECTION IS INTENDED TO EXEMPT COLORADO AGRICULTURE FROM SUCH RULES. THE GENERAL ASSEMBLY FURTHER FINDS, DETERMINES, AND DECLARES THAT IT IS IMPERATIVELY NECESSARY FOR THE CHIEF TO ADOPT THE RULES REQUIRED BY THIS SECTION IN TIME TO MEET THE DEADLINE IMPOSED BY THE FEDERAL RULES.

(2) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "AGRICULTURAL PRODUCT" MEANS A HAZARDOUS MATERIAL, OTHER THAN HAZARDOUS WASTE, WHOSE END USE DIRECTLY SUPPORTS THE PRODUCTION OF AN AGRICULTURAL COMMODITY INCLUDING, BUT NOT LIMITED TO, A FERTILIZER, PESTICIDE, SOIL AMENDMENT, OR FUEL. AN AGRICULTURAL PRODUCT IS LIMITED TO A MATERIAL IN CLASS 3, 8, OR 9, DIVISION 2.1, 2.2, 5.1, OR 6.1, OR AN ORM-D MATERIAL AS SET FORTH IN 49 C.F.R. 172 AND 173.

(b) "FARMER" MEANS A PERSON OR SUCH PERSON'S AGENT OR CONTRACTOR ENGAGED IN THE PRODUCTION OR RAISING OF CROPS, POULTRY, OR LIVESTOCK.

(3) THE TRANSPORTATION OF AN AGRICULTURAL PRODUCT OTHER THAN A CLASS 2 MATERIAL, AS SUCH TERM IS USED IN 49 C.F.R. 172 AND 173, OVER LOCAL ROADS BETWEEN FIELDS OF THE SAME FARM, IS EXCEPTED FROM THE REQUIREMENTS OF THIS PART 1 WHEN IT IS TRANSPORTED BY A FARMER WHO IS AN INTRASTATE PRIVATE MOTOR CARRIER AND THE MOVEMENT OF THE AGRICULTURAL PRODUCT CONFORMS TO RULES OF THE CHIEF, IN CONSULTATION WITH THE DEPARTMENT OF AGRICULTURE REGARDING SUCH MOVEMENT. THE CHIEF SHALL, IN CONSULTATION WITH THE DIRECTOR OF THE DEPARTMENT OF AGRICULTURE, PROMULGATE RULES AND REGULATIONS PURSUANT TO SECTION 24-4-103, C.R.S., FOR THE INTRASTATE TRANSPORTATION OF AGRICULTURAL PRODUCTS.

(4) THE TRANSPORTATION OF AN AGRICULTURAL PRODUCT TO OR FROM A FARM, WITHIN ONE HUNDRED FIFTY MILES OF SUCH FARM, IS EXCEPTED FROM THE EMERGENCY RESPONSE INFORMATION AND TRAINING REQUIREMENTS IN SUBPARTS G AND H OF 49 C.F.R. 172, AND THIS ARTICLE WHEN:

(a) IT IS TRANSPORTED BY A FARMER WHO IS AN INTRASTATE PRIVATE MOTOR CARRIER;

(b) THE TOTAL AMOUNT OF AGRICULTURAL PRODUCT BEING TRANSPORTED ON A SINGLE VEHICLE DOES NOT EXCEED:

(I) SEVEN THOUSAND THREE HUNDRED KILOGRAMS OR SIXTEEN THOUSAND NINETY-FOUR POUNDS OF AMMONIUM NITRATE FERTILIZER PROPERLY CLASSED AS DIVISION 5.1.PG III IN A BULK PACKAGING; OR

(II) ONE THOUSAND NINE HUNDRED LITERS OR FIVE HUNDRED TWO GALLONS FOR LIQUIDS OR GASSES, OR TWO THOUSAND THREE HUNDRED KILOGRAMS OR FIVE THOUSAND SEVENTY POUNDS FOR SOLIDS OF ANY OTHER AGRICULTURAL PRODUCT;

(c) THE PACKAGING CONFORMS TO RULES ADOPTED BY THE CHIEF IN CONSULTATION WITH THE DEPARTMENT OF AGRICULTURE. SUCH RULES SHALL BE ADOPTED BY SEPTEMBER 30, 1998. SUCH PRODUCTS ARE HEREBY AUTHORIZED FOR TRANSPORTATION.

(d) EACH PERSON HAVING ANY RESPONSIBILITY FOR TRANSPORTING THE AGRICULTURAL PRODUCT FOR SHIPMENT PURSUANT TO THIS SUBSECTION (4) IS INSTRUCTED IN THE APPLICABLE REQUIREMENTS OF THIS SECTION.

(5) THE RULES AND REGULATIONS ADOPTED BY THE CHIEF PURSUANT TO THIS SECTION SHALL BE NO MORE STRINGENT THAN THE FEDERAL STATUTES OR REGULATIONS REQUIRE.

(6) ANY RULES AND REGULATIONS REQUIRED TO BE ADOPTED BY THE CHIEF PURSUANT TO THIS SECTION SHALL BE PROMULGATED NO LATER THAN SEPTEMBER 30, 1998. IF THE CHIEF FINDS THAT SUCH RULES CANNOT BE PROMULGATED BY THAT DATE PURSUANT TO THE REGULAR RULE-MAKING PROCESS SET FORTH IN SECTION 24-4-103, C.R.S., THE CHIEF SHALL ADOPT TEMPORARY OR EMERGENCY RULES PURSUANT TO SECTION 24-4-103 (6).

(7) THE CHIEF SHALL SEND A COPY OF THE NOTIFICATION OF PROPOSED RULE-MAKING FOR RULES ADOPTED PURSUANT TO THIS SECTION, INCLUDING TEMPORARY OR EMERGENCY RULE-MAKING SENT PURSUANT TO SECTION 24-4-103 (3) (b), C.R.S., TO THE OFFICE OF LEGISLATIVE LEGAL SERVICES.

SECTION 4. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: May 18, 1998