

1998 SUNSET REVIEW

***Colorado Seed Act and the  
Seed Advisory Committee***

Colorado Department of Regulatory Agencies



Office of Policy and Research

# STATE OF COLORADO

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Roy Romer  
Governor

October 15, 1998

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 Colorado Department of Regulatory Agencies has completed the evaluation of the Colorado Seed Act and the Seed Advisory Committee. I am pleased to submit this written report, which will be the basis for my office's oral testimony before the 1999 Legislative Committees of Reference. The report is submitted pursuant to §24-34-104(8)(a), of the Colorado Revised Statutes, 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 27 of Title 35, C.R.S. The report also discusses the effectiveness of the Colorado Department of Agriculture's Division of Plant Industry 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

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## **Executive Summary**

The Department of Regulatory Agencies has completed its Sunset Review of the Colorado Seed Act and the Seed Advisory Committee administered by the Department of Agriculture, Division of Plant Industry. This sunset report recommends that the Seed Act be continued and the Seed Advisory Committee be sunset.

The purpose of the Colorado Seed Act is to assure that seed 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 intent of the General Assembly in enacting the Act was to prevent the distribution and use of poor quality seed through the regulation of the labeling, the labelers, and the sellers of seed for propagation in Colorado. The activities of the Division of Plant Industry that provides for an effective Seed Act include registration, inspection, distribution of information, sampling and testing, and enforcement actions.

The Office of Policy and Research found that the Division of Plant Industry performs its responsibilities satisfactorily. The report recommends amending the conditions for issuing a civil penalty by removing the condition that a pattern of similar violations exists. It is not in the public's interest to allow a pattern of violations to occur, thus potentially harming multiple consumers before significant disciplinary actions are taken.

The report also includes some technical statutory changes and updating of statutory references to clarify the law.

The Sunset Review of the Seed Advisory Committee recommends that the General Assembly sunset the Committee. The Committee has not met in over a year and has only met eight times in five years. Evidence demonstrates that the agriculture industry does not encounter problems requiring input from an advisory committee on a regular basis.

The Department of Regulatory Agencies makes the following recommendations:

- Recommendation 1:** *The General Assembly should continue the Seed Act in the Division of Plant Industry of the Colorado Department of Agriculture and set a new sunset date of July 1, 2009.* ..... 21
- Recommendation 2:** *Amend the conditions for imposition of civil penalties in §35-27-118(1)(b)(l), C.R.S.*..... 21
- Recommendation 3:** *Amend §35-27-10 (10), C.R.S., definition of "farmer seed labeler."*22
- Recommendation 4:** *Have all registrations renew on March 1.* ..... 22
- Recommendation 5:** *Update references in the statute to "Plant Variety Protection Act".* 23
- Recommendation 6:** *Update references to the Colorado Seed Industry Association.*..... 23

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## ***Background and History of Regulation***

### ***The Sunset Review Process***

The registration functions of the Commissioner of the Colorado Department of Agriculture (Commissioner) in accordance with Article 27 of Title 35, C.R.S., shall terminate on July 1, 1999 unless continued by the General Assembly. During the year prior to this date, it is the duty of the Department of Regulatory Agencies to conduct an analysis and evaluation of the Colorado Seed Act (Seed Act) pursuant to §24-34-104(28)(c)(II), C.R.S.

The purpose of this review is to determine whether the Seed Act should be continued for the protection of the public, and to evaluate the performance of the Division of Plant Industry of the Colorado Department of Agriculture. During this review, the Department of Agriculture must demonstrate that there is still a need for the registration program and that the regulation is the least restrictive regulation consistent with the public interest. DORA's findings and recommendations are submitted via this report to the Legislative Committee of Reference of the Colorado General Assembly. (Statutory criteria used in Sunset Reviews may be found in Appendix A on page 29 of this report).

The Sunset Review process includes an analysis of the statute, interviews with Division of Plant Industry staff, other state government officials, industry representatives, Colorado Seed Growers Association members, and the Colorado State University, Seed Laboratory staff. DORA made every effort to elicit information and comments from all interested parties.

### ***History***

Colorado's crop and grazing lands are major natural resources that support the state's agricultural industry. Colorado has 34 million acres of agricultural land, 51% of the state's total land base of 66.3 million acres. Of this, almost 11 million acres are cropland, and 3.2 million acres are irrigated. Colorado ranks 17<sup>th</sup> nationally in cash receipts from agriculture. There are 25,500 farms and ranches in the state, averaging 1,286 acres each. Major agricultural products include cattle, wheat, hay, corn, fruit and vegetables.

The Colorado Department of Agriculture (Department) was created in 1949. However, the first agricultural products statute was enacted by the legislature in 1937 and has been amended many times since its inception. The State of Colorado has regulated seed production since the 27<sup>th</sup> General Assembly enacted the Seed Inspection and Registration Law in 1929. The Colorado Seed Act dates from 1943 and was last revised significantly in 1993.

## *Background and History of Regulation*

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The revisions in 1993 were a result of a sunrise application submitted by the Colorado Seedsmen's Association and the Colorado Seed Growers Association. The applicants argued that without greater financial support, there would be insufficient personnel to continue effective administration of this regulatory program. The registration of seed sellers and the payment of an annual fee would greatly assist in providing adequate support for the Colorado Seed Act. In addition to the required registration of seed sellers, the 1993 revisions empowered the Department to impose fines of up to \$2,500 per offense and to revoke registrations to operate as a seed seller when there are violations of the law. Other revisions included additional definitions, clearer defined exemptions from the law, as well as a legislative declaration. There was a clarification of labeling requirements for seeds sold within the state and an imposition of a two year record-keeping requirement in conjunction with seed labeling.

Seeds sold in the state for propagation purposes, except for certain farmer sales, must be properly labeled concerning germination and purity as required by the Seed Act. The Seed Act requires that all agricultural and vegetable seeds be properly labeled before being offered for sale within the state. The basic purpose of the law is to provide the consumer with adequate information, through accurate and consistent labeling, in order to make intelligent purchases of agricultural, vegetable, flower, tree and shrub seed products.

Seed sellers, with the exception of those selling small packets only and those selling strictly wholesale, are required to register with the Department. Sellers outside Colorado whose seed is sold in Colorado are also required to register, as well as custom seed conditioners.

Since its inception, this program has utilized the services of the Seed Laboratory at the Colorado State University, Department of Soil and Crop Sciences (Seed Laboratory). The Seed Laboratory is an active member of the Association of Official Seed Analysts (AOSA), and the methods used for sample preparation and analysis in the laboratory are those approved by AOSA. Under AOSA's "Rules for Testing Seeds," a standard analysis has been developed in conjunction with the enforcement of labeling laws that furnishes information as to the composition of the seed sample and the ability of the seed to produce plants.

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## **Summary of Statute and Rules**

The Seed Act is found in §35-27-101 et seq., C.R.S. The Division of Plant Industry (Division) within the Department of Agriculture is responsible for administering and enforcing the provisions of the Seed Act. The purpose of the law is to prevent the distribution and use of poor quality seed through the regulation of the labeling, the labelers, and the sellers of seed for propagation in Colorado. Those who label, sell, or custom clean seed in Colorado must be registered under the Seed Act. Seeds are defined as agricultural, vegetable, ornamental, shrub, or tree seed for propagation.

### **Registration**

#### Who Must be Registered

1. Custom seed conditioners
2. Farmer seed labelers
3. Seed labelers
4. Retail seed dealers

**Custom seed conditioners** in Colorado engage in the business of conditioning seed by either a stationary or portable seed cleaner, if ownership of the seed is retained by the customer. Seed conditioning involves drying, cleaning, sizing, or any other operation that could change the purity or germination of the seed.

**Farmer seed labelers** label only the seed produced for sale on property they own or rent.

**Seed labelers** engage in the business of labeling seed for sale in Colorado and whose name and address appears on the label.

**Retail seed dealers** engage in the business of selling seed at retail in Colorado.

#### Exemptions to Registration

The Seed Act provides exemptions from dual registration for most persons who would fall into more than one category, and for retail seed dealers who sell prepackaged seed in one pound containers or less if the seed labeler supplying the prepackaged seed is registered.

## *Summary of Statute and Rules*

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In addition, the provisions of the Seed Act are not applicable to the following:

1. Seed not intended for propagation; except that screenings are subject to the requirements of the Seed Act;
2. Seed that is stored at, or consigned to, a seed conditioning establishment for conditioning or for sale outside the state;
3. Seed sold or consigned to a merchant, if such seed is to be recleaned before it is sold for propagation; except that the seller or consignor is responsible for any advertisements made concerning the seed;
4. Seed of a variety not protected by the Federal Plant Variety Protection Act, sold on a grower's premises and delivered to a purchaser, if such seed is grown on grower's premises, not delivered by common carrier or by mail and not commercially advertised in any way. Such seed is still subject to the noxious weed provisions of the Seed Act.
5. Seed brought into the state by the Colorado Agricultural Experiment Station for experimental purposes or for storage in the National Seed Storage Laboratory;
6. Any person who produces seed for their own use on rented or owned property; and
7. Seed held for wholesale transactions; except this seed is subject to the labeling requirements of the Seed Act.

### Registration fees

The Colorado Seed Act is funded through a combination of registration fees and General Fund appropriations. The current fees took effect in January 1994. Prior to 1994, there were no fees assessed. Please see page 16 for an explanation of the total budget.

Seed labelers	\$200.00 annually
Custom seed conditioners	\$200.00 annually
Farmer seed labelers	\$75.00 annually
Retail seed dealers	\$25.00 annually

The annual registration fee for a second business location for seed labelers, custom seed conditioners, farmer labelers, and retail dealers is \$25.00.



## *Summary of Statute and Rules*

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### ***Powers And Duties Of The Commissioner***

The Commissioner is empowered to adopt rules and regulations necessary for the administration and enforcement of the Seed Act and to perform the following duties:

- appoint qualified employees of the Department to fulfill the provisions of the Seed Act; (The Division of Plant Industry administers the program.)
- establish procedures and standards including defining allowable tolerances to be used for the inspection and approval of seed beans that are within allowable tolerances;
- establish standards for the sale of seeds;
- establish procedures and standards to embargo seeds;
- establish procedures for the reinstatement of any registration;
- establish registration fees;
- determine methods to inspect, sample, analyze, and test seed, including defining the tolerances to be followed during the process; and
- conduct hearings or delegate hearings to the arbitration council.

### ***Record-keeping And Labeling***

#### Record-keeping Requirements

Seed labelers (including farmer seed labelers) need to keep complete records for two years concerning the origin, sale, shipping, and disposition of seed they label.

Seed conditioners need to maintain records concerning the owner of the seed, kind, variety if known, quantity, and date and place of cleaning for each lot of seed conditioned.

## *Summary of Statute and Rules*

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### Label Requirements

Containers of agricultural, vegetable, and flower seeds sold within Colorado for propagation are required to have a label that is legible and plainly written or printed and that provides the following information:

- Statement indicating that the seed is treated, the name of the chemical, and whether it is harmful to humans and animals;
- Name or kind and variety for each seed;
- Lot number or lot identification;
- Origin of seed (state or foreign country);
- Percentage by weight of all weed seeds;
- Name and rate of occurrence per pound of each kind of restricted noxious weed seed present;
- Percentage by weight of inert matter;
- Percentage of germination and hard or dormant seeds if present, and the calendar month and year that the test was completed to determine percentages;
- Name and address of seed labeler or seed seller; and
- For coated seeds, the percentage by weight, of inert matter, exclusive of coating material; percentage of germination; and percentage of weight of pure seeds with coating material removed.

Seed shipped into Colorado must be tested and pass all required tests required by the Seed Act and by the rules and regulations. In addition, seed must be in a container that meets the labeling requirements of the Seed Act.

## *Summary of Statute and Rules*

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### ***Enforcement***

#### Inspections

The Commissioner enforces the Seed Act by checking for seed registration, examining labels in sales outlets, and taking samples on a random basis. Samples are analyzed at the Seed Laboratory to determine whether the labeling is accurate, within an allowable tolerance. For inspection purposes, the Commissioner is authorized during regular business hours to enter any building, yard, warehouse or storage facility in which seed is kept.

#### Disciplinary Actions

An essential component of a regulatory program is the ability of the state to discipline violators of the act. The Commissioner has the authority to issue letters of admonition or deny, suspend, revoke, or refuse to renew the registration of any applicant or registrant who:

- Has violated any provision of the Seed Act;
- Failed to obey any lawful order of the Commissioner;
- Falsified any information requested by the Commissioner;
- Had a registration or its equivalent authorization to engage in activities regulated under the Seed Act revoked, suspended or denied by another state or foreign country; or
- Has been convicted of a felony for an offense related to the conduct regulated by the Seed Act.

#### Cease and Desist Orders

The Commissioner may issue a cease and desist order against any violator of the provisions of the Seed Act. If a person fails to comply with a cease and desist order within twenty-four hours after being served, the Commissioner may bring a suit for a temporary restraining order and injunctive relief to prevent further violations. The cease and desist order may not be stayed before a hearing is held on the matter.

## *Summary of Statute and Rules*

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### Civil Penalties

The Commissioner may impose civil penalties for any violation of the Seed Act not to exceed \$2,500.00 per violation. The assessment is at the discretion of the Commissioner who may take into consideration the severity of the violation, the amount of harm caused by such violation, the presence or absence of a pattern of similar violations by the registrant, and the effect of the proposed penalty on the ability of the registrant to continue to conduct business. In addition, the Commissioner may request advice from the arbitration council (referred to below) in assessing a fine. Any penalty collected is credited to the Seed Cash Fund.

### Embargo

The Commissioner may impose an embargo if any seed is adulterated, misbranded or not labeled according to the provisions of the Seed Act. No person may remove or dispose of embargoed seed until the Commissioner grants permission for removal or disposal. The owner of embargoed seed may correct any violation within thirty days. If the violation is not corrected within thirty days, the Commissioner may proceed with the condemnation of such seed.

### Arbitration Council

The Commissioner must appoint an arbitration council composed of the Director of the Colorado State University Cooperative Extension and Experiment Station, the Dean of the College of Agriculture at the Colorado State University, the President of the Colorado Seed Industry Association, the President of a farmers' organization, and one member from the Agricultural Commission. If a seed buyer suffers damage because the seed does not produce or perform in compliance with the labeling or warranty, the buyer submits a claim to arbitration. After receiving a complaint, the Council investigates the allegations and reports its findings and recommendations to the Commissioner. The agreement reached in arbitration is binding on both parties.

## *Summary of Statute and Rules*

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### **Rules**

To administer the Seed Act, the Department of Agriculture has promulgated 25 pages of rules and regulations. The rules include the following:

- Definitions of certain terms which are not defined in the Seed Act;
- Requirements for registration of seed labelers, custom seed conditioners, and retail seed dealers and the establishment of fees;
- Label requirements and germination standards for agricultural, vegetable, and flower seeds;
- Label requirements for tree and shrub seeds;
- Lists of prohibited and restricted noxious weed seeds;
- Seed sampling requirements and procedures;
- Requirements for analysis and testing of seeds;
- Tolerances on seed label information; and
- Requirements concerning sales of disease free seed beans.

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## **Other Regulation**

### ***Regulation In Other States***

The chart on the following page provides a snapshot of agricultural and vegetable seed regulation in other states. The states represent a diversified cross-section of seed regulation in the United States. States with significant agriculture industries such as Florida and Texas, are included, as well as Utah and Wyoming, which have similar production levels to Colorado.

All fifty states have seed laws, whereby the licensing and regulation of seeds are regulated by each state's department of agriculture. Several states have utilized or adopted the Recommended Uniform State Seed Law (RUSSL) created by the Association of American Seed Control Officials (AASCO). The goal of RUSSL is to achieve uniformity of seed legislation among member states. The Colorado Seed Act adopted several RUSSL recommendations for the 1993 revisions of the Seed Act. Colorado's regulatory scheme provides significant oversight of the industry through the civil penalty authority and the restricted and prohibited noxious weed list. These capabilities exceed the authority of many other states. However, the Division of Plant Industry's ability to enforce the Seed Act is not as extensive as other states due to limited budget and personnel constraints.

As illustrated on the chart on the following page, permitting requirements include licensing seed labelers, requiring yearly licenses, and issuing licenses that are valid until revoked. States generally follow the recommended labeling requirements outlined in the RUSSL. All states have designated an official agency responsible for certifying seed.

## Other Regulation

### Regulation of Seed in Selected States

State	Permit to sell seed	Record-keeping Requirements	Tolerances	Certified Seed	Labeling requirements
FL	Required of every person who sells, distributes, offers, exposes, or handles seeds.	Keep complete records on each lot available for inspection, including file sample.	Rules for seed testing of AOSA*	Illegal to sell or label as "Certified" unless seed produced, sealed and labeled under legally authorized agency.	Labeling requirements include lot #, net weight, origin, % by weight of all weed seed, name and # of restricted noxious weed seed, % of inert matter, % of germination, date of completed test, kind and variety of seed.
GA	Valid until revoked; all dealers, including those from out-of-state must be licensed.	Keep for two years; all invoices and records must show lot numbers.	Rules for seed testing of AOSA.	No noxious weed allowed in Georgia certified seed.	Include name and variety of seed in excess of 5% of the whole, net weight, lot number, origin of seed, % by weight of all weed seeds, % of inert matter, % of dormant seed, date of testing.
IL	Annual; required of retail seed dealer, wholesale seed dealer, seed broker, seed merchant, and operators of public auction sale or similar type consignment sale.	Person's name appearing on the label as handling seed must keep complete records for 2 years; file sample of each lot of seed must be kept for one year after final disposition of that lot.	Rules for seed testing of AOSA	Certified seed must meet all the requirements for seeds and must have attached a tag issued for such seed by the certifying agency.	Must comply with labeling rules under the Federal Seed Act; in addition the kind and variety of seed, % of weight, and origin.
ME	License seed labelers.	<b>No record-keeping requirement.</b>	All agricultural seeds containing primary noxious-weed seeds are prohibited from sale.	Must have been inspected and certified by legally authorized state seed certification service.	Include kind and variety, lot #, origin, % by weight of all weed seeds, content of noxious weed seed, % of inert matter, % of germination, date of testing, name and address of seed labeler.
MO	Required of anyone who sells, distributes, offers, or sells; separate permit required for each place of business.	Only wholesalers must keep complete records for 3 years; available during normal business hours.	Rules for seed testing of AOSA.	Certification of seed is carried out by an agency or association designated annually by the Director of the Missouri Agricultural Experiment Station.	Include kind, variety, lot #, origin, % of weight of pure seed and all weed seeds, % of inert matter, noxious weed seed content, name & address of seed labeler, germination, date of testing.
TX	Yearly license required by vendors of vegetable seed; person who sells agricultural seed must pay an inspection fee during each germination period seed is for sale.	For agricultural seed – must file quarterly reports covering total weight of all sales.	Rules for seed testing of AOSA, except no tolerance allowed for balloonvine, itchgrass, and serrated tussock.	Illegal to sell or label as "certified" unless seed is produced, sealed and labeled under seed certifying agency.	Labeling requirements include name & kind & variety of seed, lot #, name and address of seed labeler, name and number of noxious weed seeds per lb., date of germination test, year seed was packaged. In addition, for agricultural seed - % of hard seed if present, origin, total weight of all weed seed, % of inert matter.
UT	No license or registration required.	Distributors of seed keep records of all seed distributed for 2 years and a file sample of each lot of seed for one year after disposition of lot.	Prescribed by rule - weed seed and noxious weed seed tolerances permitted.	Agricultural Experiment Station at Utah State Univ. is official state agency responsible for certifying the production, approval and testing of foundation seeds.	Labeling requirements include common name and address of labeler or seller, lot #, % of weight of all weed seeds, % of inert matter, noxious weed seed content, origin & date of testing specifying % of germination, % of hard seed.
WY	Annual license required of all vendors of agricultural, vegetable, flower or tree seeds within the state.	No record-keeping requirement.	Tolerance on restricted noxious weed seed shall not exceed 45 seeds per lb. in small seeds and 5 seeds per lb. in small grains and seeds of similar size.	Illegal to sell or label as "certified" unless labels or tags are issued by legally authorized state seed certification service.	Labeling requirements include kind, variety, name and address of seller, origin of seed, lot number and % of pure seed, crop seed inert matter, and germination.

\*AOSA – Association of Official Seed Analysts

## Other Regulation

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### **Federal Laws And Regulations**

Federal laws that are relevant to Colorado's Seed Act are the Federal Seed Act, 7 U.S.C.A. §§ 1551-1610, and the Plant Variety Protection Act, 7 U.S.C.A. §§ 2321-2582.

The Federal Seed Act is administered by the United States Department of Agriculture. It primarily regulates foreign commerce in seeds, requires labeling to prevent misrepresentation of seeds in interstate commerce, and requires certain standards with respect to certain imported seeds. The federal government relies on the states to take the lead in the local administration and enforcement of seed regulation.

### **Record-keeping Requirements**

The Federal Seed Act Regulation 201.2(1)(1) states that the following items should be part of the "complete records" for each lot of seed sold. The term "complete record" means information which relates to the origin, treatment, germination, and purity (including variety) of each lot of agricultural or vegetable seed transported or delivered for transportation in interstate commerce. Such information includes seed samples and records of declarations, labels, purchases, sales, cleaning, bulking, treatment, handling, storage, analyses, tests, and examinations.

1. **LABEL COPY** requires maintaining a copy of the original label, and any modifications made to it during the time of distribution.
2. **ORIGIN** notes the source of the seed lot, i.e., grower, field location, broker, wholesaler, etc.
3. **VARIETY** records verify the variety of the seed that includes verification of private lines (the true variety designation, how it is sold to the buyer). This information is maintained even though the seed may be sold under the "variety not stated" labeling option.
4. **TEST INFORMATION** includes copies of the results of all laboratory tests performed for purity and germination, and any other additional tests performed.
5. **CONDITIONING** consists of cleaning, handling, bulking, storage, etc. of seed. It also includes dates of when particular tasks were performed, and perhaps a "cleaning sequence" log, verifying when a lot of seed moved through the conditioning plant.
6. **TREATMENTS** specify substances used, rates of application, dates of treatment, etc.



## *Other Regulation*

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7. **SALES** records include all sales of each lot and include lot numbers on sales invoices.
8. **SAMPLES** include a file sample for each lot that is kept for one year after final disposition of the lot.

Another federal act which is important to the seed industry is the Plant Variety Protection (PVP) Act which was enacted on December 24, 1970 (7 U.S.C.A. §2321-2582). Its purpose is to "encourage the development of novel varieties of sexually-reproduced plants" by providing their owners with exclusive marketing rights in the United States. The requirements of protection are that the variety be uniform, stable, and distinct from all other varieties. Fungi, bacteria, and first generation hybrids are excluded from PVP protection. Varieties sold or used in the United States for longer than one year or more than four years in a foreign country are also ineligible for protection. Plant Variety Protection can be obtained for any variety which is distinct from previous lines if the traits are uniform and remain stable when reproduced. Under the PVP Act, a farmer is allowed to save seed from year to year and replant it. This exemption does not allow a farmer to market the seed by its protected variety name or to advertise such unnamed seed for sale.

Particularly for farm crops such as grains, it is necessary to provide incentives for researchers to risk several years and many dollars to develop better producing, herbicide resistant crops that have desirable food traits. Seeds of the protected variety must be deposited with a repository and are not accessible by others.

A Certificate of Protection issued pursuant to the PVP Act is valid for 18 years from the date of issuance. The owner has the right to exclude others from selling, offering for sale, reproducing, importing, exporting, or using the protected variety in the production of a hybrid or different variety during this time. The owner is responsible for enforcing these rights.

### ***Colorado Seed Growers Association Seed Certification***

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, according to the Colorado Seed Growers Association (Association) by-laws, 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.

## *Other Regulation*

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The purpose of seed certification is to maintain the genetic purity and identity of seed through all steps of production, harvesting, storage, and conditioning. The close cooperation of the certifying agency, the grower, seed conditioner, and distributor of the seed is required for a successful program. 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. The "mother plant" is inspected in the field for disease and for variety certification.

The certification process is accomplished when seed meets specific minimum requirements. Each crop seed has its own specific standards. The certification system involves a generation of a "pedigree" system which is comprised of four classes of seed that must meet minimum standards. Each class of seed, except breeder seed, is denoted by a tag of a specific color.

1. Breeder Seed - the initial stock seed produced by the breeder or institution supplying the variety. Development of a new variety can take 12 to 15 years of crosses, evaluation, and Breeder Seed increases. Breeder Seed is not normally found in commercial channels.
2. Foundation Seed - produced from Breeder Seed. It is grown and handled under strict procedures that maintain genetic identity and purity. It is the source of Registered and Certified Seed.
3. Registered Seed - produced from Foundation Seed. Foundation Seed is made available to seed organizations, growers, and commercial seed firms through the Registered Seed class to provide quality seed sources for growers.
4. Certified Seed - produced from Registered Seed. Certified seed is planted by the growers to produce the commercial crop. Under certain conditions, deviations from the generation system are permitted.

Seed certification for field crops in Colorado is supervised by the Colorado Seed Growers Association under authority of the State Board of Agriculture. The field crop certification program originated as an extension project and was conducted through county extension agents in the early years of extension work. The certification program depends largely upon the cooperation of the Department of Soil and Crop Sciences of the Colorado State University, the Cooperative Extension Service of the Colorado State University, the Colorado State University Experiment Station, the Colorado Seed Growers Association, the growers and approved conditioners, and other segments of the seed industry.

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### ***Program Description and Administration***

The Division of Plant Industry within the Colorado Department of Agriculture administers and enforces the Seed Act in Colorado. The daily functions of the program are carried out by the following staff:

<b>FTE</b>	<b>FY 1997-98</b>
1.50	Agricultural Program Specialist II
.75	Administrative Assistant III
.25	Agricultural Program Specialist IV
<u>.10</u>	Agricultural Program Specialist V
2.10	Total FTE

Inspection work in the Division is performed by eleven inspectors (Agricultural Program Specialist II). They are assigned to specific programs but actually work in all eight of the multiple inspection programs within the Division. These programs include: phytosanitary, pesticides, pesticide applicators, organic certification, greenhouses, groundwater management, nursery stock, and greenhouse/seed inspections.

The seed program is funded by revenue from registration fees and from a General Fund appropriation for seed inspection, greenhouse inspection, and other plant request inspections, and plant quarantine activities. The cash funded portion funds a large portion of the agreement with the Seed Laboratory in Ft. Collins to provide seed testing for germination, purity and noxious weeds in samples taken. It also provides for two-thirds of the administrative support cost and about two thirds of the operating costs of the program.

#### Cash Funded Portion:

	<u>94-95</u>	<u>95-96</u>	<u>96-97</u>	<u>97-98</u>
Revenue	\$51,104	\$74,371	\$63,519	\$63,471
Expense	\$29,865	\$53,837	\$57,616	\$63,471
Seed Agreement (part of expense)	\$16,000	\$26,500	\$26,500	\$30,000

#### General Funded Portion:

	<u>94-95</u>	<u>95-96</u>	<u>96-97</u>	<u>96-97</u>
Total Personal Services	\$112,674	\$113,812	\$114,962	\$115,075
Seed Agreement	\$16,000	\$16,000	\$16,000	\$16,000
Operating	\$2,763	\$1,527	\$2,792	\$3,322
Travel	\$1,408	\$1,511	\$1,163	\$1,979
Leased Vehicles:	\$1,871	\$2,336	\$2,108	\$2,298
<b>TOTAL</b>	<b>\$134,716</b>	<b>\$135,186</b>	<b>\$137,025</b>	<b>\$138,674</b>

## Program Description and Administration

### Registrations

FISCAL YEAR	SEED LABELER	CUSTOM SEED CONDITIONER	FARMER SEED LABELER	RETAIL SEED DETAILER	TOTAL
1993-94	173	22	46	789	1030
1994-95	163	26	52	789	1030
1995-96	158	27	48	802	1035
1996-97	155	20	43	818	1036
1997-98	146	23	38	779	986

### Complaint Procedures

One of the responsibilities of the Division of Plant Industry is the handling of complaints. The Division screens complaints to make sure that it has jurisdiction and that the complaint at least arguably rises to the level of being a violation of the law. According to the Division, complaints generally are from the Colorado Seed Growers Association and address a violation of the Federal Plant Variety Act. The remaining complaints usually originate from the Division's inspectors. Of the eleven complaints investigated from fiscal years 1993-94 through 1996-97, four originated with Division inspectors, six from the Colorado Seed Growers' Association, and one from an industry representative.

The process of reviewing a complaint, assuming it appears legitimate, usually involves an investigation. A letter is sent informing the registrant that he/she may have violated the law and must respond to the inquiry. The letter is often followed by a telephone call. Resolving the complaint may result in a warning letter, a dismissal of the complaint, or, on rare occasions, legal action. The results of the investigation and the outcome are placed in the registrant's file.

The following chart illustrates the complaint history from 1993 to 1997.

Complaints from Fiscal Year 1993-94 to Fiscal Year 1996-97

<i>Fiscal Year</i>	<i>Number of complaints</i>	<i>Outcome</i>
<i>FY 1993-94</i>	5	<i>4 warning letters, 1 no action taken</i>
<i>FY 1994-95</i>	1	<i>1 warning letter</i>
<i>FY 1995-96</i>	4	<i>1 warning call; 2 warning letters; 1 cease and desist</i>
<i>FY 1996-97</i>	1	<i>no action taken</i>

### Inspection Procedures

The Seed Inspection Program enforces compliance with the provisions of the Seed Act and the rules and regulations. The inspection staff of the Division of Plant Industry provides market place surveillance throughout the state through inspection visits. Section 35-27-115, C.R.S., permits the Commissioner to perform investigations of any building, yard, warehouse, or storage facility where seed is kept, used, stored, handled, conditioned, disposed of, or transported.

*Program Description and Administration*

The statistics for seed inspection and sampling for the past four fiscal years are illustrated in the chart below.

**Seed Sampling And Inspections**

<b>1994-95</b>	<b>TOTAL</b>	<b>1995-96</b>	<b>TOTAL</b>
Seed inspections made*	1,404	Seed inspections made	1,015
Total pounds of seed sampled	4,750,695	Total pounds of seed sampled	9,700,340
Range grass	429,352	Range grass	643,368
Turf species	253,826	Turf species	274,242
Forage	544,250	Forage	849,080
Cereals	3,508,295	Cereals	7,726,395
Large seeded legumes	5,550	Large seeded legumes	189,550
Vegetables	7,100	Vegetables	16,351
Ornamentals	2,322	Ornamentals	1,353
Total number of samples taken	378	Total number of samples taken	500**
Range grass	109	Range grass	137
Turf species	86	Turf species	81
Forage	99	Forage	154
Cereals	71	Cereals	90
Large seeded legumes	2	Large seeded legumes	10
Vegetables	6	Vegetables	18
Ornamentals	5	Ornamentals	10
<b>1996-97</b>	<b>TOTAL</b>	<b>1997-98</b>	<b>TOTAL</b>
Seed inspections made	696	Seed inspections made	638
Total pounds of seed sampled	4,366,570	Total pounds of seed sampled	3,523,529.573
Range grass	651,127	Range grass	625,555
Turf species	377,080	Turf species	236,784
Forage	749,680	Forage	1,115,870
Cereals	2,474,091	Cereals	1,072,884
Large seeded legumes	55,900	Large seeded legumes	464,550
Vegetables	56,991	Vegetables	7,885,206
Ornamentals	1,700	Ornamentals	.32
Total number of samples taken	475	Total number of samples taken	520
Range grass	143	Range grass	147
Turf species	90	Turf species	85
Forage	135	Forage	181
Cereals	83	Cereals	82
Large seeded legumes	4	Large seeded legumes	16
Vegetables	17	Vegetables	5
Ornamentals	3	Ornamentals	4

\*The number of inspections may vary from year to year due to the workload of the inspectors. Because they perform inspection functions for several other programs, the program with the immediate need has priority.

\*\*The number of samples taken in 1995-96 increased from 378 to 500 because of a larger budget resulting from revenue received from seed registration.

\*\*\*The number of samples taken in 1996-97 decreased from 500 in the previous year to 475 because of an increase in the cost of testing samples.

The Division is authorized to inspect any records required to be kept and to make copies of any records inspected. Seed labelers, sellers, and custom seed conditioners are required to maintain and keep records according to the seed law and rules. The inspection of records is a lower priority of the seed program than checking on proper labeling and sampling for seed content.

## Program Description and Administration

### Disciplinary Actions

The Division has a variety of enforcement mechanisms available that are created by statute. The Division may take disciplinary action by withholding, denying, suspending or revoking any registration. The Division may invoke civil penalties for violations of the law, issue a cease and desist order, and issue an embargo on any seed believed to be adulterated, misbranded or in violation of any provision of the law.

The Division enforces the law by checking for seed registration, examining labels in sales outlets, and drawing samples on a random basis. If a lot of seed is offered for sale in violation of the seed law or rules, a cease and desist order can be issued. Field inspection cease and desist orders are usually given for incomplete labels, no labels, or for an expired germination test date. Samples are analyzed at the Seed Laboratory to determine whether the labeling is accurate and within an allowable tolerance. If laboratory analysis of samples shows that label information is incorrect, a cease and desist order is issued by the Division.

#### Cease and Desist Orders Issued from Fiscal Year 1993-94 to Fiscal Year 1997-98

Fiscal Year	No. Field Cease and Desist Orders Issued	No. Lab Cease and Desist Orders Issued	Total No. of Cease and Desist Orders Issued	No. Seed Dealers Issued Field Cease & Desist Orders	No. Seed Dealers Issued Laboratory Cease & Desist Orders
1993-94	468	54	522	114	22
1994-95	602	38	640	167	12
1995-96	430	52	482	124	21
1996-97	306	43	349	70	16
1997-98	371	50	421	84	14

\*refers to inspection of seed sales outlets

The chart below summarizes the cease and desist orders issued for incorrect label information determined by a laboratory analysis. The violations pertain to purity, germination, and the presence of prohibited or restricted noxious weed seed.

<b>Summary of Seed Sampling Lab Cease and Desist Orders Fiscal Years 1993-94 through 1997-98</b>					
	1993-94	1994-95	1995-96	1996-97	1997-98
Purity	23	15	23	20	30
Germination	8	13	13	11	11
Prohibited Noxious Weed Seed	2	1	4	3	0
Restricted Noxious Weed Seed	19	3	9	6	6
Other	2	6	3	3	3
<b>Total Lab Cease and Desist Orders</b>	<b>54</b>	<b>38</b>	<b>52</b>	<b>43</b>	<b>50</b>
<b>Total number of samples taken</b>	<b>337</b>	<b>378</b>	<b>500</b>	<b>475</b>	<b>520</b>

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## **Conclusions and Recommendations**

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. The activities of the Division of Plant Industry (Division) which support the Department's mission and provide for an effective Seed Act include registration, inspection, distribution of information, sampling and testing, and enforcement actions.

The Seed Act registration and inspection program provides consumers with adequate information, through accurate and consistent labeling, to make intelligent purchases of agricultural and vegetable seed products. In addition to clarifying labeling requirements for seed sold within the state and requiring a two-year record-keeping requirement in conjunction with seed labeling, the Seed Act specifies allowable tolerances for seed quality.

Prior to the major revision of the Seed Act in 1993, the level of administration and enforcement was inadequate to ensure quality seed and thereby protect the public. The lack of funds resulted in insufficient personnel to effectively run the regulatory program. The funding level had been reduced from a high of \$150,000 in 1985 to a low of \$50,000 in fiscal year 1992-93. In addition, from FY 1989-90 to FY 1992-93 the number of inspections steadily decreased from 532 in FY 1989-90 to 175 in FY 1992-93.

A significant change in 1993 was the imposition of a registration requirement of seed sellers and payment of an annual fee. This registration requirement allowed the Division to identify Colorado seed sellers, which has eased enforcement of the law. Of equal importance, it provided a more stable funding base and enabled the Division to expand its administrative and enforcement activities. By identifying individuals and businesses active in this industry, the registration program resulted in dissemination of educational materials and better monitoring of seed industry practices.

Every year, inspectors from the Division collect samples of seeds pursuant to the Seed Act for testing to assure purity, germination, and freedom from noxious weeds. 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. For several years prior to 1992, 600-700 seed samples were taken by the Division for a representative cross sample of seeds being sold in the state in order to ensure seed quality under the Seed Act. In 1992, however, only about 200 samples per year were being taken, a number considered to be inadequate for enforcing the law. During fiscal year 1997-98, 520 samples were taken as a representative cross sample of seeds being sold in the state. Inspections ensure that the seed complies with the prohibited and restricted weed requirements outlined in both statute and rule.

## *Conclusions and Recommendations*

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Of equal importance, the 1993 revision added an enforcement authority that empowered the Department to impose fines of up to \$2,500 per offense and to revoke registrations to operate as a seed seller.

Another important component of the Seed Act is the list of restricted and prohibited noxious weeds included in the rules and regulations. Every year the Department of Agriculture issues hundreds of cease and desist orders to seed sales outlets. During 1998, inspectors found a noxious weed listed on the label of wildflower seed packages. This particular weed, toadflax, has many different varieties, some of which are prohibited in Colorado. Because the label only stated toadflax and not the particular variety, the inspectors were unable to determine whether it was the variety of toadflax listed on the prohibited noxious weed list. Inspectors issued a cease and desist order on all packages which were subsequently returned to the labelers. This illustrates how the Division's inspection program ensures compliance with the provisions of the Seed Act and prevents potential crop problems in the state.

All fifty states have seed acts because they recognize the need for a program that registers, samples, and inspects seeds to prevent the distribution and use of poor quality seed in their states. It is the conclusion of this review that the Seed Act serves to protect the public by ensuring that agricultural and vegetable seeds sold in Colorado are properly labeled before being offered for sale within the state.

***Recommendation 1:*** *The General Assembly should continue the Seed Act in the Division of Plant Industry of the Colorado Department of Agriculture and set a new sunset date of July 1, 2009.*

### **Other Statutory Findings and Recommendations**

If the General Assembly decides to continue the Seed Act under the Division of Plant Industry of the Colorado Department of Agriculture, the following statutory recommendations are offered to improve the Seed Act.

***Recommendation 2:*** *Amend the conditions for imposition of civil penalties in §35-27-118(1)(b)(I), C.R.S.*

The statute currently permits the Commissioner to impose a civil penalty considering the severity of the violation, the amount of harm caused by such violation, the presence or absence of a pattern of similar violations by the registrant, and the effect of the proposed penalty on the ability of the registrant to continue to conduct business. It is not in the public's interest to allow a pattern of violations to occur, thus potentially harming multiple consumers before significant disciplinary actions are taken.



## *Conclusions and Recommendations*

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The recommended revised language for this section exists in the Pesticide Act, the Pesticide Applicators Act, the Farm Products Act, and other Department of Agriculture program statutes. The Department of Regulatory Agencies recommends that §35-27-118(1)(b)(I), C.R.S. be amended to read as follows:

Before imposing any civil penalty, the commissioner may consider the effect of such penalty on the ability of the person charged to stay in business.

The recommended language will allow the Commissioner to protect the public while still considering the effect on the registrant's business.

***Recommendation 3: Amend §35-27-10 (10), C.R.S., definition of "farmer seed labeler."***

Presently, the definition of "farmer seed labeler" reads: "any person who produces seed for sale on property owned or rented by such person or such person's employer in Colorado." This language should be amended to read: "farmer seed labeler" means a person who labels only the seed produced for sale in Colorado on property in Colorado owned or rented by such person or such person's employer.

The current definition is incomplete because it does not clarify that the person must label seed. Even though the term has been defined in the rules to clarify this, it would be more appropriate to have a more accurate definition in the statute.

***Recommendation 4: Have all registrations renew on March 1.***

Currently, registration renewals are distributed throughout the year and renewal applications must be mailed every month. It is more efficient for clerical support staff to mail all renewal applications at the same time. It also reduces the margin for error in sending out renewal applications on time. It is difficult for chain stores to keep track of their registration renewals as they add new stores. They are more likely to register all their stores on time if there is a single renewal date for the year.

In March, when inspections begin, the inspectors determine whether the seed outlet is currently registered. If all facilities had to register no later than March 1, the inspectors could be guaranteed that the outlet is registered for the entire calendar year. Subsequently, the inspectors would not have to return later in the year to issue a cease and desist order for nonregistration.

## *Conclusions and Recommendations*

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In addition, the recommended renewal deadline of March 1 coincides with the renewal deadline for nursery registrations. A large percentage of sales outlets are required to secure both nursery and seed registrations and having the same renewal deadline is more efficient for these parties.

***Recommendation 5: Update references in the statute to "Plant Variety Protection Act".***

Sections 35-27-104(d), and 35-27-113 (g) and (h), C.R.S., contain references to the "Plant Variety Protection Act." These references should be amended to reflect the changes made in the United States Code. The references in the Colorado Revised Statutes currently read "7 U.S.C.A. secs. 2323 to 2583, as amended." They should be changed to "7 U.S.C.A. secs. 2321 to 2582, as amended."

***Recommendation 6: Update references to the Colorado Seed Industry Association.***

The statute currently refers to this association as the Colorado Seedsmen's Association. They have officially changed their name to the Colorado Seed Industry Association.

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## **Seed Advisory Committee**

### ***Creation, Mission and Composition***

The Seed Advisory Committee (Committee) has functioned for several years, advising and providing information to the Colorado Department of Agriculture. The composition of the Committee was originally outlined in §35-27-103, C.R.S. Definitions. The definition stated that the Committee "shall serve as technical advisor to the Department of Agriculture." The Committee was originally comprised of the Director of the Seed Laboratory, the head of the Agronomy Department and the head of the Horticulture Department at Colorado State University, the Extension Service Agronomist, the Commissioner of Agriculture, and a representative from the Colorado Seedsmen's Association, now known as the Colorado Seed Industry Association.

In response to the 1992 Sunrise Review of the Colorado Seed Sellers, the composition of the Committee was changed. Currently, the six member Committee is comprised of two permanent members and four members appointed by the Commissioner serving terms of three years. The two permanent members include a seed scientist from Colorado State University (CSU) and the manager of the Colorado Seed Growers Association. The Committee currently has one vacant permanent position - a CSU seed scientist. The four appointed members who cannot serve more than two consecutive terms represent:

- a member of the Colorado Seed Industry Association;
- a farmer member of the Colorado Seed Growers Association;
- a member from the eastern slope; and
- a member from the western slope or San Luis Valley.

### ***Meetings and Expenditures***

The Committee meets when requested by the Commissioner. The members of the Committee receive no compensation, but are reimbursed for actual and necessary expenses incurred during fulfillment of their duties.

## *Seed Advisory Committee*

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From June 1993 through July 1997, the Committee met eight times. In total, it has incurred \$2377.07 in travel and food expenses. Please see the table below showing the meeting schedule with the numbers of attendees.

Advisory Committee Meetings

<b>Date of Meeting</b>	<b>Type</b>	<b>Members Present</b>	<b>Others Present</b>
June 16, 1993	full	4	4
July 29, 1993	full	4	6
February 10, 1994	full	3	6
September 13, 1994	full	3	6
April 8, 1997	full	5	9
May 8, 1997	full	5	16
June 3, 1997	subcommittee	2	5
July 9, 1997	full	3	9

### ***Advisory Committee Accomplishments***

The following is a list of the Advisory Committee's proposals and the outcome of each one.

1993            Two meetings were held in 1993. New rules were proposed by the Committee due to the repeal and reenactment of the Colorado Seed Law in 1993 by the General Assembly. These proposed rules were necessary because of the new requirement to register labelers, custom seed conditioners and retail seed dealers. Rules were necessary to establish registration fees; label requirements concerning germination, purity and noxious weeds for all seeds offered for sale; and germination standards for flower and vegetable seeds. In addition, the Committee proposed rules regarding lists of prohibited and restricted noxious weed seeds, seed sampling requirements and procedures, analysis and testing of seeds, tolerances on seed label information and requirements concerning sale of disease free seed beans.

All proposed rules were adopted and became effective on December 30, 1993.

1994            Changes were proposed concerning the vegetable seed germination standard and minor changes to the labeling and sampling requirements. New record retention requirements for custom seed conditioners and seed labelers were proposed.

Proposed amendments were adopted and became effective March 2, 1995.

## *Seed Advisory Committee*

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1994 The Committee discussed potential changes to the existing requirements affecting the sale of tree and shrub seed.

No consensus was reached and the Committee chose to table the issue. No rule changes resulted from the meeting.

1997 In 1996, the Colorado Noxious Weed Act was repealed and reenacted and a state noxious weed list was developed by rule. As a result, the Department of Agriculture examined the weed list under the Seed Act. The Department conferred with the Advisory Committee regarding additions to the prohibited and restricted noxious weed list. In 1997, three Committee meetings were held along with one subcommittee meeting to propose the amended weed list. Requirements on restricting noxious weeds were also proposed.

Rulemaking hearings were held and changes became effective on March 30, 1998.

### ***Analysis and Recommendations***

The Seed Advisory Committee advises the Commissioner on matters relating to the rules and regulations of the Colorado Seed Act. The Committee is representative of the regulated industry and provides a conduit through which the Department of Agriculture can receive information about the concerns and the problems affecting the industry.

Prior to 1992, the Committee made recommendations for revision to reorganize and strengthen the Seed Act. New issues such as registration of seed sellers were addressed. These recommendations for a reorganized Seed Act were included in the Sunrise application submitted to the Legislative Council in 1992.

Since June 1993, the Committee has met eight times to advise the Commissioner on two major issues. During 1993, the Committee participated in the subsequent rulemaking that was necessary after the repeal and reenactment of the Seed Act. The Committee held four meetings regarding rulemaking; two in 1993 and two in 1994. It was not until April 1997 that the Committee convened again. Between April and July 1997, the Committee met four times to advise the Commissioner on changes to the prohibited and restricted noxious weed list. These changes were significant to the protection of farmers' crops and the environment of the entire state of Colorado. The Department conferred with the Committee regarding additions to the prohibited and restricted noxious weed list.

## Seed Advisory Committee

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One of the criteria that the General Assembly uses to determine whether an advisory committee should continue is the number of times that it meets. The Committee has not met in over a year and has only met eight times in 5 years. The evidence demonstrates that the agriculture industry does not routinely encounter problems requiring input from an advisory committee on a regular basis. Granted, the Committee's contributions to the two major issues mentioned above were significant. However, when future issues arise that require input from the industry, the Commissioner may appoint an advisory committee for assistance. As an example, in the future, the issue of genetically altered seed through biotechnological advances may require new oversight and amended rules. When this occurs, the Commissioner may appoint an ad-hoc committee that mirrors the existing advisory committee.

***Recommendation:*** *The Department of Regulatory Agencies recommends that the General Assembly sunset the Seed Advisory Committee within the Department of Agriculture.*

## ***Appendices***

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**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 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 not 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 the public interest.



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## **Appendix B - Colorado Seed Act**

### ARTICLE 27

35-27-101.	Short title.
35-27-102.	Legislative declaration.
35-27-103.	Definitions.
35-27-104.	Scope of article.
35-27-105.	Label requirements.
35-27-106.	Tolerances.
35-27-107.	Sales from bulk lots.
35-27-108.	Seed shipped into state.
35-27-109.	Seed beans - approval.
35-27-110.	Seed records and samples.
35-27-111.	Registration of custom seed conditioners, farmer seed labelers, retail seed dealers, and seed labelers - form - fees - renewal.
35-27-112.	Record-keeping requirements.
35-27-113.	Prohibitions.
35-27-114.	Powers and duties of commissioner.
35-27-115.	Inspections - access - investigations - subpoena.
35-27-116.	Enforcement.
35-27-117.	Disciplinary actions - denial of registration.
35-27-118.	Civil penalties.
35-27-119.	Embargo.
35-27-120.	Reports - bulletins.
35-27-121.	Advisory committee - repeal.
35-27-122.	Arbitration council - procedures.
35-27-123.	Requirement and effect of arbitration.
35-27-124.	Seed cash fund - fees.
35-27-125.	Repeal of article - termination of functions.

**35-27-101. Short title.** This article shall be known and may be cited as the "Colorado Seed Act".

**35-27-102. Legislative declaration.** The general assembly hereby finds and declares that truth in the labeling of seed is of paramount importance to the citizens of Colorado because the distribution and subsequent use of poor quality seed caused by inaccurate or misleading labeling of such seed can result in severe economic hardship due to low crop yields, poor crop quality, and the spread of noxious weed seed. It is the intent of the general assembly in enacting this article to prevent the distribution and use of poor quality seed through the regulation of the labeling, the labelers, and the sellers of seed for propagation in Colorado.

**35-27-103. Definitions.** As used in this article, unless the context otherwise requires:

(1) "Advertisement" means all representations commercial and otherwise, other than labeling, disseminated in any manner or by any means by the seller of seed as such representations relate to such seed.

(2) "Bean" means all species of genus *phaseolus*, *vigna*, and *cicer*.

(3) "Certified seed" means seed certified by a seed certifying agency pursuant to this article and includes foundation and registered seed.

(4) "Certifying agency" means the seed certification service of the Colorado State University authorized by the state board of agriculture or the authorized seed certifying agency of another state.

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- (5) "Commissioner" means the commissioner of agriculture.
- (6) "Conditioning" means drying, cleaning, scarifying, sizing, or any other operation which could change the purity or germination of seed.
- (7) "Custom seed conditioner" means any person in Colorado who engages in the business of conditioning seed by either a stationary or portable seed cleaner, if ownership of such seed is retained by the customer.
- (8) "Department" means the department of agriculture.
- (9) "Disease of beans" means a bacterial, viral, or fungal disease of beans. The term includes any of the following diseases and any variations or new strains of the following diseases which are recognized as pathogenic or a potential threat to seed bean production:
- (a) Anthracnose (*collectotrichum lindemuthianum*);
  - (b) Bean bacterial wilt (*corynebacterium flaccumfaciens* ssp. *flaccumfaciens*);
  - (c) Strains of brown spot (*pseudomonas syringae* pv. *syringae*);
  - (d) Common bean blight (*xanthomonas campestris* pv. *phaseoli*);
  - (e) Halo blight (*pseudomonas syringae* pv. *phaseolicola*); and
  - (f) BCMV (bean common mosaic virus).
- (10) "Farmer seed labeler" means any person who produces seed for sale on property owned or rented by such person or such person's employer in Colorado.
- (11) "Germination" means the emergence and development from the seed embryo of those essential structures which, for the kind of seed in question, are indicative of the ability to produce a normal plant under favorable conditions and includes live ungerminated seeds which are designated as dormant or hard.
- (12) "Inert matter" means matter which is not seed, including broken seed, sterile florets, chaff, fungus bodies, and stones, as defined by the commissioner.
- (13) "Kind" means one or more related species or subspecies which singly or collectively are known by one common name, including corn, oats, alfalfa, timothy, and western wheatgrass.
- (14) "Labeling" means all labels, tags, and other written, printed, or graphic representations, in any form, accompanying and pertaining to specific seed whether in bulk or in containers and includes invoices; except that labeling does not include advertisements as defined in this section.
- (15) "Lot" means a definite quantity of seed identified by a lot number or other mark. Every portion or bag of any such lot shall be uniform within recognized tolerances for the factors which appear in the labeling of such lot.
- (16) "Noxious weed seed" means the seed produced from plants which are especially troublesome and detrimental and which may cause damage or loss to a considerable portion of the land or livestock of a community. Noxious weed seed are divided into two classes: "prohibited noxious weed seed" and "restricted noxious weed seed" and are defined as follows:

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(a) "Prohibited noxious weed seed" means the seed of perennial, biennial, and annual weeds which are highly detrimental and especially difficult to control. The presence of prohibited noxious weed seed in seed precludes the sale of seed for propagation. Prohibited noxious weed seed includes the seed of any weed so designated by the commissioner.

(b) "Restricted noxious weed seed" means the seed of weeds which are very objectionable in fields, lawns, and gardens but which can be controlled by good cultural practices. Restricted noxious weed seed includes the seed of any weed so designated by the commissioner.

(17) "Origin" means the state or foreign country in which seed is grown.

(18) "Person" means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, limited liability company, partnership, association, or other legal entity.

(19) "Pesticide" means a substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, substance, or mixture of substances intended for use as a plant regulator, defoliant, or desiccant; except that the term "pesticide" shall not include any substance that is a "new animal drug" as designated by the United States food and drug administration.

(20) "Record" means any information which relates to the origin, treatment, germination, purity, kind, and variety of each lot of seed sold in this state. Such information includes seed samples and documents showing declarations, labels, purchases, sales, conditioning, bulking, treatment, handling, storage, analyses, tests, and examinations.

(21) "Retail seed dealer" means any person who engages in the business of selling seed at retail in Colorado.

(22) "Screenings" means chaff, sterile florets, immature seed, weed seed, inert matter, and any other materials removed in any way from any seed in any kind of cleaning procedure.

(23) "Seed" means agricultural, vegetable, ornamental, shrub, or tree seed for propagation.

(24) "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 label of such seed.

(25) "Tolerance" means:

(a) For "seed", the allowable deviation, as prescribed in the rules and regulations adopted pursuant to this article, from any figure used on a label including but not limited to those figures used to designate the percentage of any fraction of the lot in question, the percentage germination, or the number of noxious weed seeds present.

(b) For "bean", in addition to the requirements of paragraph (a) of this subsection (25), the deviation from minimum levels of seed-borne pathogens and the diseases of beans allowed by the commissioner.

(26) "Treated" means that the seed has received an application of a substance or that it has been subjected to a procedure for which a claim is made.

(27) (a) "Variety" (cultivar) means a division of a kind which is distinct, stable, and uniform.

(b) For purposes of this subsection (27):

(i) "Distinct" means that the variety can be differentiated by one or more identifiable morphological, physiological, or other characteristics from all other varieties publicly known.

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(II) "Stable" means that the variety will remain unchanged in its essential and distinctive characteristics and its uniformity when reproduced or reconstituted as required by the different categories of varieties.

(III) "Uniform" means that variations in essential and distinctive characteristics are describable.

(28) "Weed seed" means the seed of plants detrimental to agriculture and generally recognized as weeds within this state and includes noxious weed seed.

**35-27-104. Scope of article.** (1) The provisions of this article shall not apply to:

(a) Seed not intended for propagation; except that screenings are subject to the requirements of section 35-27-113 (1) (e);

(b) Seed in storage in or consigned to a seed conditioning establishment for conditioning or for sale outside the state; except that:

(I) Disclosure of information concerning the holding, sale, and transportation of such seed shall be provided:

(A) On the labels attached to such seed; or

(B) Upon request; and

(II) All labeling and advertisements made regarding such seed are subject to this article.

(c) Seed sold or consigned to a merchant, if such seed is to be recleaned before it is sold for propagation; except that the seller or consignor of such seed shall be responsible for any advertisements made concerning such seed in the course of the sale of such seed;

(d) Seed of a variety not protected by the federal "Plant Variety Protection Act", 7 U.S.C.A. secs. 2323 to 2583, as amended, sold on a grower's premises and delivered to a purchaser, if such seed is: Grown on such grower's premises, not delivered by common carrier or by mail, and not commercially advertised in any way; except that such seed shall be subject to the noxious weed provisions of section 35-27-113 (2), and the grower of such seed shall be responsible for any advertisements made concerning such seed in the course of the sale of such seed;

(e) Seed brought into the state by the Colorado agricultural experiment station for experimental purposes or for storage in the national seed storage laboratory;

(f) Any person who produces seed for such person's own use on property owned or rented by such person or such person's employer;

(g) Seed held for wholesale transactions; except that such seed shall be subject to the labeling requirements of section 35-27-105.

(2) Any person who acts as a custom seed conditioner, farmer seed labeler, retail seed dealer, or seed labeler in this state shall be subject to this article.

**35-27-105. Label requirements.** (1) (a) Except as otherwise provided in this article, every container of seed which is sold, offered or exposed for sale, bartered, or distributed within this state for propagation shall conspicuously bear a legible and plainly written or printed label or tag in English which shall provide all information required by the commissioner. A label shall not bear false or misleading information.

(b) For purposes of this subsection (1), a lot of seed sold at wholesale or at bulk shall be categorized as a sale in a single container.

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(2) All labels made pursuant to this section shall include arbitration information required pursuant to section 35-27-123.

**35-27-106. Tolerances.** (1) Tolerances shall be recognized between:

- (a) The percentages or rates of occurrence found by analysis, test, or examination; and
- (b) The percentages or rates of occurrence prescribed by the commissioner.

(2) In prescribing tolerances the commissioner shall use as guides:

- (a) The tolerances defined in the "Federal Seed Act", 7 U.S.C.A. secs. 1551 to 1610, as amended; and
- (b) Rules for testing seed adopted by the association of official seed analysts.

**35-27-107. Sales from bulk lots.** (1) If seed is sold, offered or exposed for sale, bartered, or distributed in or from a bulk lot, a label required pursuant to section 35-27-105 shall be furnished to each purchaser of such seed; except that such label shall not be required to be furnished for sales otherwise exempted.

(2) No label required pursuant to subsection (1) of this section shall be required for bulk lot seed if such seed is:

- (a) Sold, offered or exposed for sale, bartered, or distributed in a lot of less than five pounds directly to a consumer; and
- (b) Taken from a container in such consumer's presence.

**35-27-108. Seed shipped into state.** (1) No seed shall be brought into the state unless such seed:

- (a) Has been tested and has passed all such required tests as required by the commissioner pursuant to rule and regulation; and
- (b) Is in a container which meets the labeling requirements of section 35-27-105; and
- (c) Meets all other requirements of this article.

(2) Tests required pursuant to paragraph (a) of subsection (1) of this section shall be developed by the commissioner through rule and regulation.

**35-27-109. Seed beans - approval.** (1) (a) For seed beans, the commissioner shall establish tolerances of seed-borne pathogens, inspection procedures and standards, and approval procedures for those seed beans which are found to be within allowable tolerances.

(b) The commissioner may designate those areas of the state in which the provisions of this section shall apply.

(2) (a) The commissioner shall establish reasonable fees for inspections performed pursuant to this section.

(b) Fees established pursuant to this subsection (2) shall be:

(I) Sufficient to offset the actual direct and indirect costs incurred by the commissioner in administering the provisions of this section; and

(II) Paid by the person selling, bartering, or distributing seed beans.

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(3) The commissioner may, by contractual agreement, retain qualified persons to act as agents of the commissioner for the performance of inspections pursuant to subsection (1) of this section.

**35-27-110. Seed records and samples.** Each person whose name appears on a label on a seed container as a handler of the seed in such container shall keep complete records as prescribed by the commissioner concerning the origin, sale, shipping, and disposition of such seed and shall keep or arrange to have kept a file sample of such seed for a period of at least two years after final disposition of such seed. All such records and samples shall be accessible for inspection by the commissioner or the commissioner's agent during customary business hours. Records required pursuant to this section shall be in addition to any record kept pursuant to section 35-27-112.

**35-27-111. Registration of custom seed conditioners, farmer seed labelers, retail seed dealers, and seed labelers - form - fees - renewal.** (1) After January 1, 1994, no person shall act as a custom seed conditioner, farmer seed labeler, retail seed dealer, or seed labeler in this state, except as provided in this article, if such person is not registered with the department.

(2) (a) A person may register as a custom seed conditioner, farmer seed labeler, retail seed dealer, or seed labeler by submitting information on the form and with the registration fee prescribed by the commissioner.

(b) Each registration completed pursuant to this section shall be effective on the first day of the month following the month it was submitted to the department and shall expire on the last day of the month twelve months from the date it became effective.

(c) A registrant shall report any change in the information provided in such registrant's registration form or in any report submitted to the department pursuant to this article within fifteen days of such change in the manner prescribed by the commissioner.

(3) The following persons shall be exempt from the provisions of subsections (1) and (2) of this section:

(a) Any person registered as a custom seed conditioner, farmer seed labeler, or seed labeler shall not be required to register as a retail seed dealer to sell seed at retail in Colorado;

(b) Any person registered as a seed labeler shall not be required to register as a custom seed conditioner in Colorado;

(c) Any person registered as a farmer seed labeler shall not be required to register as a custom seed conditioner if such person is only cleaning or conditioning such person's own seed; and

(d) Any person acting as a retail seed dealer selling only prepackaged seed in containers of one pound or less shall not be required to register as a retail seed dealer if the seed labeler supplying such prepackaged seed is properly registered.

(4) (a) The commissioner shall establish registration fees; except that registration fees for:

(I) Custom seed conditioners and seed labelers shall not exceed three hundred dollars; and

(II) Farmer seed labelers and retail seed dealers shall not exceed seventy-five dollars.

(b) The commissioner shall establish fees for each additional separate registration location according to the class of registrant; except that the fee for:

(I) Custom seed conditioners and seed labelers shall not exceed seventy-five dollars for each such additional separate location; and

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(II) Farmer seed labelers and retail seed dealers shall not exceed twenty-five dollars for each such additional separate location.

(5) (a) Any person registered pursuant to this article may renew such person's registration within one year of its expiration. No registration shall be renewed if it is not renewed within one year of expiration.

(b) A registration may be renewed by a registrant by submitting a completed registration renewal form and the requisite renewal fee before such registrant's current registration expires. Such renewal forms and fees shall be prescribed by the commissioner.

(c) If a registrant does not complete the renewal process in compliance with paragraph (b) of this subsection (5), such registrant shall be required to pay a fee of an amount double the prescribed renewal fee.

(d) No renewal shall be effective until the requisite fee is received by the department.

**35-27-112. Record-keeping requirements.** Every person acting as a custom seed conditioner, farmer seed labeler, retail seed dealer, or seed labeler in this state registered pursuant to this article shall keep and maintain certain records. Records shall be maintained as specified by the commissioner for a period of two years at the registrant's address. Records required pursuant to this section shall be in addition to any record kept pursuant to section 35-27-110.

**35-27-113. Prohibitions.** (1) It is unlawful and a violation of this article for any person to sell, offer or expose for sale, barter, or distribute any seed within this state, if such seed:

(a) Has not been tested to determine the percentage of germination of such seed within the previous thirteen months; except that for seed stored in hermetically sealed containers, if such seed has not been tested within the previous twenty-four months;

(b) Has been treated with a material which is poisonous to humans or livestock unless there is a conspicuous warning in the labeling which gives the commonly accepted or abbreviated chemical name of the poisonous substance;

(c) Is not labeled in accordance with this article;

(d) Is or has been the subject of false or misleading advertisements or statements by the person, or such person's agent, who is selling, exposing or offering for sale, bartering, or distributing such seed;

(e) Is sold in the form of screenings, but is not labeled and invoiced as "screenings for processing, not for seeding";

(f) Is officially labeled or advertised as certified or registered, and if such seed has not been produced, conditioned, and packaged in conformity with the standards of purity as to kind and variety in compliance with the rules and regulations of the certifying agency. For purposes of this paragraph (f), labeling or advertising guarantees that seed is certified if such labeling or advertising uses the word "certified", "foundation", or "registered" in any manner.

(g) Is sold by a variety name not certified by a certifying agency and if such seed is of a variety for which a certificate or application for certificate of plant variety protection under the federal "Plant Variety Protection Act", 7 U.S.C.A. secs. 2323 to 2583, as amended, requires sale only as a class of certified seed; or

(h) Is sold by a variety name when such seed is of a variety for which a certificate or application for certificate of plant variety protection under the federal "Plant Variety Protection Act", 7 U.S.C.A. secs. 2323 to 2583, as amended, has been granted or for which an application for a certificate of plant variety protection has been sought.

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(2) (a) It is a civil violation of this article for any person to sell, offer or expose for sale, barter, or distribute any seed within this state if such seed contains:

(I) More than two percent of weed seed by weight or such other standard established by the commissioner;

(II) Prohibited noxious weed seed; or

(III) (A) More restricted noxious weed seed per pound than the amount declared on the label attached to the container of such seed, if the amount declared meets the standards established by the commissioner; or

(B) More restricted noxious weed seed per pound than the amount allowed by the standards established by the commissioner.

(b) Any person who violates paragraph (a) of this subsection (2) shall be subject to a civil penalty pursuant to section 35-27-118.

(3) It is unlawful and a violation of this article for any person within this state to:

(a) Detach, alter, deface, or destroy any label or tag completed pursuant to section 35-27-105, if such person is not the ultimate consumer;

(b) Alter or substitute seed or other material in a manner that may defeat the purposes of this article;

(c) Disseminate any false or misleading advertisement concerning a specific lot of seed in any manner or by any means;

(d) Intentionally hinder or obstruct in any way any authorized person in the performance of such person's official duties as such duties pertain to this article;

(e) Perform, or hold oneself out as being authorized to perform, any of the acts for which registration is required without registering pursuant to section 35-27-111;

(f) Solicit, advertise, or offer to perform any of the acts for which registration is required without being registered;

(g) Refuse or fail to comply with a cease and desist order issued pursuant to section 35-27-116;

(h) Refuse or fail to comply with the provisions of this article;

(i) Make false, misleading, deceptive, or fraudulent advertisements concerning a specific lot of seed;

(j) Impersonate any state, county, city and county, or municipal official or inspector authorized pursuant to this article;

(k) Refuse or fail to comply with any rules or regulations adopted by the commissioner pursuant to this article or to any lawful order issued by the commissioner.

(4) It is unlawful and a violation of this article for any person to sell, offer or expose for sale, barter, or distribute, for other than propagation purposes, within the state, any seed that has been treated unless it is sold separately from untreated seed or grain and is accompanied by an affidavit, certificate, label, or tag stating that the seed has been chemically treated and cannot be used for food, feed, or oil purposes.

(5) It is unlawful and a violation of this article for any person acting as a custom seed conditioner, farmer seed labeler, retail seed dealer, or seed labeler to:



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(a) Make false or misleading representations or statements of fact in any application, record, or report submitted to the department pursuant to this article;

(b) Fail to maintain or submit any records or reports required by this article;

(c) Permit the use of a registration by any person other than the registrant.

(6) A person commits a class 1 misdemeanor and shall be punished as provided in section 18-1-106, C.R.S., when such person:

(a) Sells, offers or exposes for sale, barter, or distributes within the state:

(I) Any seed beans which have not been approved in accordance with section 35-27-109;

(II) Any seed subject to the provisions of this article if such person fails to comply with or violates the provisions of this article;

(b) (I) Removes or disposes of any detained or embargoed seed without prior permission from the commissioner or a court of competent jurisdiction or removes or alters any labeling on such seed.

(II) Any person violating this paragraph (b) may be subject to civil penalties assessed in accordance with section 35-27-118.

(7) The failure by any person to comply with the provisions of subsection (3) (e), (3) (f), or (3) (i) of this section is a deceptive trade practice and is subject to the provisions of the "Colorado Consumer Protection Act", article 1 of title 6, C.R.S.

(8) It is the duty of the several district attorneys of the state to prosecute all persons charged with the violation of any of the provisions of this article. It is the duty of the attorney general to advise the commissioner in all legal matters and to represent the commissioner or the commissioner's agents in all actions brought by or against the commissioner or the commissioner's agents.

**35-27-114. Powers and duties of commissioner.** (1) In addition to any other duties in this article, the commissioner shall:

(a) Administer and enforce the provisions of this article;

(b) Adopt rules and regulations necessary for the administration and enforcement of this article including but not limited to rules and regulations which:

(I) Set forth the methods to inspect, sample, analyze, and test seed, including defining the tolerances to be followed during such processes pursuant to section 35-27-106;

(II) Amend the lists of prohibited and restricted noxious weed seed;

(III) Establish procedures and standards including defining allowable tolerances to be used for the inspection and approval of seed beans that are within allowable tolerances pursuant to section 35-27-109;

(IV) Establish standards for the sale of any seed including but not limited to standards for the acceptable content of pathogens, biotic contaminant, insects, plant pests, and endophytes in such seeds;

(V) Establish procedures and standards to embargo seed pursuant to section 35-27-119;

(VI) Establish procedures for the reinstatement of any registration authorized pursuant to this article;

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(VII) Enforce any disciplinary actions authorized pursuant to this article including but not limited to letters of admonition or the denial, suspension, or revocation of any registration;

(VIII) Establish the amounts of the registration fees pursuant to section 35-27-111;

(c) Promptly notify any person who transported, sold, bartered, or distributed the seed or offered or exposed the seed for sale which does not test in compliance with the provisions of this article;

(d) Inspect, sample, analyze, and test seed pursuant to this article.

(2) In addition to any other powers conferred in this article, the commissioner may:

(a) Inspect, sample, analyze, and test seed pursuant to paragraph (d) of subsection (1) of this section at such time and place and to such extent as the commissioner deems necessary to determine compliance with this article;

(b) Appoint such qualified employees of the department as necessary to carry out the provisions of this article;

(c) Cooperate with the United States department of agriculture to enforce federal seed law;

(d) (I) Conduct any hearings required by this article pursuant to article 4 of title 24, C.R.S.; or

(II) Delegate to the arbitration council created in section 35-27-122 the power to conduct such hearings; or

(III) Subject to appropriations made to the department, employ administrative law judges on a full- or part-time basis to conduct such hearings;

(e) Conduct investigations pursuant to section 35-27-115;

(f) Request, pursuant to section 35-27-122 (1) (d), that the arbitration council assist in determining civil penalties assessed pursuant to section 35-27-118.

**35-27-115. Inspections - access - investigations - subpoena.** (1) The commissioner, upon the commissioner's own motion or upon the complaint of any person, may make an investigation necessary to determine compliance with this article.

(2) (a) For inspection purposes pursuant to subsection (1) of this section, the commissioner shall have free and unimpeded access during regular business hours, either upon consent of the owner or upon obtaining an administrative search warrant, to:

(I) Enter any building, yard, warehouse, or storage facilities in which seed or any other related material is kept, used, stored, handled, conditioned, disposed of, or transported; and

(II) Inspect any records required to be kept pursuant to this article.

(b) The commissioner is authorized to make copies of any record inspected pursuant to subparagraph (II) of paragraph (a) of this subsection (2).

(3) (a) The commissioner has full authority to administer oaths, take statements, issue subpoenas to compel the appearance of witnesses before the commissioner, issue subpoenas duces tecum for the production of any books, memoranda, papers, or other documents, articles, or instruments, and compel disclosure by witnesses of all facts known to such witnesses relative to any matter under investigation.

(b) Upon failure or refusal of any person to obey any subpoena issued pursuant to paragraph (a) of this subsection (3), the commissioner may petition the district court to enter an order compelling such person to comply with the subpoena.

(c) Failure to obey an order of the court entered pursuant to paragraph (b) of this subsection (3) is contempt of court.

(4) Complaints of record made to the commissioner and the results of the commissioner's investigations shall be closed to public inspection, except to the person in interest as defined in section 24-72-202 (4), C.R.S., or pursuant to court order, during the investigatory period and until dismissed or notice of hearing and charges are served.

**35-27-116. Enforcement.** (1) The commissioner, pursuant to the provisions of the "State Administrative Procedure Act", article 4 of title 24, C.R.S., shall enforce the provisions of this article. After an investigation, the commissioner may, through the attorney general, enforce any of the provisions of this article, including recovering any money due the department or any penalty assessed pursuant to this article, and defend any suit or action brought against the commissioner or the department under this article.

(2) (a) If the commissioner has reasonable cause to believe a violation of this article is occurring and determines that immediate action is necessary, the commissioner may issue a cease and desist order. Such cease and desist order shall be issued to the alleged violator and shall set forth the alleged violation, the facts which constitute such violation, and an order that all such violative conduct immediately cease.

(b) If a person fails to comply with a cease and desist order within twenty-four hours after being served with such order, the commissioner may bring a suit for a temporary restraining order and injunctive relief to prevent any further violation of such order.

(c) No stay of a cease and desist order shall be issued before a hearing has been held at which both parties have had an opportunity to appear.

(d) Matters brought before a court pursuant to this section shall have preference over other matters on the calendar of the court.

(3) (a) If the commissioner determines that a person has engaged in or is about to engage in any act or practice violating any provision of this article, any rule or regulation, or any order issued under this article, the commissioner may apply to a court of competent jurisdiction to temporarily or permanently restrain such person or enjoin the violative practice.

(b) In any action taken pursuant to paragraph (a) of this subsection (3), the court shall not require the commissioner to:

(I) Plead or prove irreparable injury or inadequacy of a remedy at law; or

(II) Post a bond.

(4) (a) Any lot of seed which is sold, offered or exposed for sale, bartered, or distributed in violation of this article shall be subject to embargo on complaint of the commissioner to a court of competent jurisdiction for the area in which such lot of seed is located.

(b) If the court finds, pursuant to paragraph (a) of this subsection (4), seed to be in violation of this article and orders the embargo and condemnation of such seed, such seed shall be, pursuant to court order, conditioned, denatured, destroyed, relabeled, or otherwise disposed of in a manner consistent with the quality of such seed.

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**35-27-117. Disciplinary actions - denial of registration.** (1) The commissioner, pursuant to the provisions of article 4 of title 24, C.R.S., may issue letters of admonition or deny, suspend, refuse to renew, or revoke any registration authorized under this article if the registrant:

(a) Refuses or fails to comply with any provision of this article, any rule or regulation adopted under this article, or any lawful order of the commissioner;

(b) Is convicted of a felony for an offense related to the conduct regulated by this article;

(c) Has a registration or license of equivalent status denied, revoked, or suspended by any registering or licensing authority of any state or foreign country;

(d) Refuses to provide the commissioner with reasonable, complete, and accurate information regarding such person's business, if requested to do so by the commissioner; or

(e) Falsifies any information requested by the commissioner.

(2) In any proceeding held under this section, the commissioner may accept as prima facie evidence of grounds for disciplinary action any disciplinary action taken against a registrant in another jurisdiction, either foreign or domestic, if the violation which prompted the disciplinary action in that jurisdiction would be grounds for disciplinary action under this section.

(3) (a) All disciplinary actions taken by the commissioner pursuant to this article shall be deemed final for purposes of judicial review.

(b) Any person aggrieved by any disciplinary action taken by the commissioner shall appeal to the Colorado court of appeals.

(4) No registrant whose registration has been revoked may apply or reapply for registration under this article within two years after the date of such revocation.

**35-27-118. Civil penalties.** (1) (a) Any person who violates any provision of this article or any rule or regulation adopted pursuant to this article is subject to a civil penalty, as determined by the commissioner.

(b) (I) Before imposing any civil penalty, the commissioner shall consider the severity of the violation, the amount of harm caused by such violation, the presence or absence of a pattern of similar violations by the registrant, the effect of the proposed penalty on the ability of the registrant to continue to conduct business, and any other factors deemed relevant.

(II) The commissioner may request advice from the arbitration council in assessing a fine pursuant to this section.

(c) The maximum penalty imposed by the commissioner shall not exceed two thousand five hundred dollars per violation.

(2) No civil penalty shall be imposed unless the person charged is given notice and an opportunity for a hearing pursuant to article 4 of title 24, C.R.S.

(3) If the commissioner is unable to collect a civil penalty or if any person fails to pay all or a set portion of such civil penalty, the commissioner is authorized to retain the attorney general pursuant to section 35-27-116 to bring suit to recover such penalty. In any action brought pursuant to this section the commissioner shall be entitled to recover costs and reasonable attorney fees.

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**35-27-119. Embargo.** (1) (a) This section shall apply if the commissioner finds or has reasonable cause to believe that any seed is:

(I) (A) Adulterated or misbranded; or

(B) Not labeled pursuant to this article; and

(II) (A) In violation of any provision of this article or any rule or regulation adopted pursuant to this article;

(B) From an unregistered seed labeler;

(C) For sale or has been sold by an unregistered retail seed dealer; or

(D) Has been distributed by an unregistered custom seed conditioner.

(b) The commissioner shall conduct an investigation to determine if a violation of paragraph (a) of this subsection (1) has occurred.

(2) If paragraph (a) of subsection (1) of this section applies, the commissioner shall affix to the seed in question labeling to give notice that:

(a) The seed violates this article; and

(b) The seed is embargoed; and

(c) No person may remove or dispose of such seed by sale or otherwise until permission for removal or disposal is given by the commissioner or a court of competent jurisdiction.

(3) If the commissioner determines that embargoed seed is not adulterated or mislabeled, the commissioner shall remove the labeling attached pursuant to subsection (2) of this section.

(4) The owner of seed embargoed under this section may correct any violation found by the commissioner within thirty days after the embargo of such seed. If the violation is not corrected within thirty days, the commissioner may petition a court of competent jurisdiction to condemn such seed.

(5) (a) If a court finds that embargoed seed is in violation of this article, such seed shall, after entry of such court's decree, be destroyed at the expense of the owner, claimant, or custodian thereof, under the supervision of the commissioner, and all court costs, attorney fees, storage fees, and other reasonable and proper expenses shall be assessed against the owner, claimant, or custodian of such seed.

(b) If adulteration or mislabeling of embargoed seed may be corrected by proper conditioning or labeling, the court, after entry of such court's decree and if costs, attorney fees, storage fees, and expenses are paid and a good and sufficient bond is secured by the owner, claimant, or custodian of such seed, may order that such seed be delivered to the owner, claimant, or custodian for corrective labeling or conditioning. Any such corrective labeling or conditioning shall be conducted under the supervision of the commissioner. The expense of such supervision shall be paid by such owner, claimant, or custodian. The seed shall be returned to its owner, claimant, or custodian when the seed no longer violates this article and the expenses of such supervision have been paid. The commissioner shall inform the court of compliance by the owner, claimant, or custodian of the seed.

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**35-27-120. Reports - bulletins.** Except as provided for in section 35-27-115 (4), the commissioner may publish bulletins or press reports setting forth results of any examination, analysis, or test conducted pursuant to this article. Bulletins may include the names of persons who have had seed lots examined, analyzed, or tested. The commissioner may also publish bulletins or press reports which set forth information on seed. Any such report or publications intended for circulation outside the executive branch shall be published and circulated in accordance with the provisions of section 24-1-136, C.R.S.

**35-27-121. Advisory committee - repeal.** (1) (a) The commissioner shall appoint four members of a six member seed advisory committee to terms of three years to advise in formulating rules and regulations for carrying out the provisions of this article. Such advisory committee shall have two permanent members as follows: A seed scientist at Colorado State University and the manager of the Colorado seed growers association.

(b) The other four committee members shall be appointed as follows:

(I) A member of the Colorado seedsmen's association; except that the first such appointee shall serve a term that terminates on July 1, 1994;

(II) A farmer member of the Colorado seed growers association; except that the first such appointee shall serve a term that terminates on July 1, 1995; and

(III) (A) Two members of which one shall be from the east slope and one from the west slope or San Luis valley.

(B) The initial appointees appointed pursuant to sub-subparagraph (A) of this subparagraph (III) shall be appointed to terms that terminate on July 1, 1996.

(c) No appointed member shall serve more than two consecutive terms.

(2) Members of the committee shall receive no compensation, but shall be reimbursed for actual and necessary expenses incurred in the performance of their duties as members of the committee.

(3) (a) This section is repealed, effective July 1, 1999.

(b) Prior to said repeal, the seed advisory committee shall be reviewed as provided for in section 2-3-1203, C.R.S.

**35-27-122. Arbitration council - procedures.** (1) (a) The commissioner shall appoint an arbitration council composed of five standing members and five alternate members. The following shall each recommend one standing and one alternate member:

(I) The directors of the Colorado state university cooperative extension and experiment station;

(II) The dean of the college of agriculture, Colorado state university;

(III) The president of the Colorado seedsmen's association;

(IV) The president of any organization of farmers in the state as the commissioner determines to be appropriate; and

(V) The agricultural commission.

(b) Each alternate member shall serve only in the absence of the member for whom such member is an alternate.

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(c) The council shall elect a chair and a secretary from its membership. The chair shall conduct meetings and deliberations of the council and shall direct all of its other activities. The secretary shall keep accurate records of all such meetings and deliberations and shall perform such other duties for the council as the chair directs.

(d) The council shall conduct arbitrations. The council may also be called into session by or at the direction of the commissioner or upon direction of the chair to consider matters referred to it by the commissioner or such chair.

(2) (a) A buyer of seed shall request arbitration by filing a verified complaint with the commissioner together with a filing fee of ten dollars; except that the commissioner by rule or as otherwise provided by law may reduce the amount of the fee if necessary pursuant to section 24-75-402 (3), C.R.S., to reduce the uncommitted reserves of the fund to which all or any portion of the fee is credited. After the uncommitted reserves of the fund are sufficiently reduced, the commissioner by rule or as otherwise provided by law may increase the amount of the fee as provided in section 24-75-402 (4), C.R.S. Such buyer shall serve a copy of the complaint upon the seller of such seed by certified mail or personal service. If the seed has been planted, the complaint shall be filed in time to allow inspection of the plants under field conditions.

(b) Within five working days after receipt of a copy of the complaint, the seller shall file a verified answer to the complaint with the commissioner and shall serve a copy of the answer upon the buyer by certified mail.

(c) The commissioner shall refer the complaint and answer to the council for investigation, findings, and recommendations.

(d) Upon referral of a complaint for investigation, the council shall make a prompt and full investigation of the allegations in the complaint and shall report its findings and recommendations to the commissioner in an arbitration report. Such arbitration report shall be filed with the commissioner within sixty days after such referral or a later date if the parties agree.

(e) The arbitration report of the council shall include findings of fact, conclusions of law, and recommendations as to costs, if any, including but not limited to costs of any investigation conducted.

(f) In the course of its investigation, the council or any of its members may:

(I) Examine the buyer and the seller on all relevant matters;

(II) Grow a representative sample of the seed through the facilities of Colorado state university to production; and

(III) Hold informal hearings at such time and place as the chairman may direct after reasonable notice to all parties.

(g) The council may delegate all or any part of an investigation to one or more of its members. Any such delegated investigation shall be summarized in a report by such member and shall be considered and addressed by the council in its arbitration report.

(h) The members of the council shall receive no compensation for the performance of their duties but shall be reimbursed for actual and necessary expenses.

(i) After the council has filed its arbitration report with the commissioner, the commissioner shall promptly transmit such arbitration report by certified mail to all parties.

**35-27-123. Requirement and effect of arbitration.** (1) (a) If a buyer of seed suffers damage because such seed does not produce or perform in conformance with the labeling or warranty or because of negligence by the seller, the buyer shall submit such buyer's claim to arbitration pursuant to this section and section 35-27-122. Such submittal shall be a prerequisite to such buyer's right to maintain any legal action against the seller of such seed. Any statute of limitations shall be tolled until ten days after the filing of the arbitration report.

(b) No claim may be asserted as a counterclaim or defense in any action brought pursuant to paragraph (a) of this subsection (1) by a seller against a buyer, if the buyer has not submitted such claim to arbitration. After the buyer files a written notice of intention to assert a claim as a counterclaim or defense in such action, accompanied by a copy of the buyer's complaint filed under section 35-27-122 (2) (a), the statute of limitations shall be tolled for such claim until ten days after the filing of the arbitration report pursuant to section 35-27-122 (2) (d).

(2) (a) Every label required pursuant to section 35-27-105 shall include clear language that arbitration is required for claims arising out of the sale of seed; except that arbitration shall not be required if the notice required pursuant to this paragraph (a) is not included.

(b) A notice in the following form or equivalent language shall be sufficient to comply with paragraph (a) of this subsection (2):

**"NOTICE OF REQUIRED ARBITRATION**

**UNDER THE "COLORADO SEED ACT", ARTICLE 27 OF TITLE 35, COLORADO REVISED STATUTES, ARBITRATION IS REQUIRED AS A PREREQUISITE TO CERTAIN LEGAL ACTIONS, COUNTERCLAIMS, OR DEFENSES AGAINST A SELLER OF SEED. INFORMATION ABOUT THIS REQUIREMENT MAY BE OBTAINED FROM THE COLORADO COMMISSIONER OF AGRICULTURE."**

(3) (a) An arbitration report filed pursuant to section 35-27-122 (2) (d) shall be binding upon all parties to the extent agreed upon in any contract governing the sale which was the subject of the arbitration.

(b) In the absence of an agreement to be bound by arbitration, a buyer may bring legal action against a seller or assert such claim as a counterclaim or defense in any action brought by the seller at any time after the arbitration report has been filed.

(c) During litigation involving a complaint which has been arbitrated pursuant to this section, any party who was subject to such arbitration may introduce the arbitration report as evidence of the facts found in the report if the party against whom the report is offered was also subject to the arbitration. The court may give such weight to the council's findings and conclusions of law and recommendations as to damages and costs as the court sees fit based upon all the evidence before the court. The court may also take into account any finding of the arbitration council of any failure of any party to cooperate in such arbitration proceedings, including any finding as to the effect of delay in filing the arbitration claim or answer upon the ability of the arbitration council to determine the facts of the case.

**35-27-124. Seed cash fund - fees.** All fees and civil fines collected pursuant to this article shall be transmitted to the state treasurer who shall credit the same to the seed cash fund, which fund is hereby created. The seed cash fund is created to supplement any general fund appropriation. All moneys credited to the fund and all interest earned on the investment of moneys in the fund shall be a part of the fund and shall not be transferred or credited to the general fund or to any other fund except as directed by the general assembly acting by bill. In addition to any appropriation from the general fund, the general assembly shall make annual appropriations from the seed cash fund to the department to carry out the purposes of this article.

**35-27-125. Repeal of article - termination of functions.** This article is repealed, effective July 1, 1999. Prior to such repeal, the registration functions of the commissioner of agriculture shall be reviewed as provided for in section 24-34-104, C.R.S.