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Requirements for Grain Dealers:

Colorado



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A National Agricultural Law Center Research Publication
Requirements for Grain Dealers: Colorado

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- 1) Licensing: [Colo. Rev. Stat. §§35-37-104 to 105; 107 to 108](#)
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Colo. Rev. Stat. Tit. 35, Art. 37

Current through legislation effective April 1, 2020 of the 2020 Regular Session.

§ 35-37-101. Short title

The short title of this article 37 is the “Farm Products Act”.

§ 35-37-102. Legislative declaration

The general assembly hereby declares that farm products are commodities affected with a public interest and thus should be regulated for the protection of both the producer and the consumer.

§ 35-37-103. Definitions--rules

As used in this article 37, unless the context otherwise requires:

(1) “Agent” means any person who, on behalf of any dealer or small-volume dealer, buys, receives, contracts for, or solicits any farm products from or sells farm products for the owner thereof or who negotiates the consignment or purchase of any farm products on behalf of any dealer or small-volume dealer.

(2) "Commercial feeding" means the feeding of livestock by a person who receives compensation from the owner of the livestock for the feeding.

(3) "Commissioner" means the commissioner of agriculture or his or her designee.

(4) "Commodity" means unprocessed small, hard seeds or fruits such as wheat, corn, oats, barley, rye, sunflower seeds, soybeans, beans, grain sorghums, and other seeds or fruits as may be determined by the commissioner.

(5) "Consignor" includes any person who ships or delivers to any dealer or small-volume dealer any farm products for handling, sale, or resale.

(6) "Credit sale contract" means a contract for the sale of a farm product when the sale price is to be paid on a date later than thirty days after delivery of the farm product to the buyer and includes those contracts commonly referred to as deferred payment contracts, deferred pricing contracts, and price later contracts.

(7)(a) "Dealer" means:

(I) Any person engaged in buying any farm products from the owner for processing or resale;

(II) Any person engaged in receiving and taking possession of any farm products from the owner for storage or safekeeping;

(III) Any person engaged in soliciting or negotiating sales of farm products between the vendor and purchaser respectively;

(IV) Any person who receives on consignment or solicits from the owner thereof any kind of farm product for sale on commission on behalf of the owner, or who accepts any farm product in trust from the owner thereof for the purpose of resale, or who sells or offers for sale on commission any farm product or in any way handles any farm product for the account of, or as an agent of, the owner thereof; or

(V) Any person engaged in buying any farm products from the owner thereof for the commercial feeding of livestock that are owned wholly or in part by another, at an animal feeding operation

with a capacity of more than two thousand five hundred head of livestock. The commissioner shall establish rules to determine the capacity of animal feeding operations for purposes of this article 37.

(b) "Dealer" does not include:

(I) A bona fide retail grocery merchant or restaurateur having a fixed or established place of business in Colorado as long as the use of farm products by the person is directly related to the operation of the person's retail grocery or restaurant; or

(II) A producer under the "Colorado Cottage Foods Act", section 25-4-1614(9)(c), who earns net revenues of ten thousand dollars or less per calendar year from the sale of each eligible food product.

(8)(a)(I) "Farm products" includes the following unprocessed products produced in Colorado or owned by any Colorado resident, dealer, or small-volume dealer:

(A) Agricultural, horticultural, viticultural, fruit, and vegetable products of the soil;

(B) Livestock and livestock products, except livestock held by the purchaser and not resold or processed within ninety days after the purchase date;

(C) Milk; and

(D) Honey.

(II) "Farm products" also includes:

(A) Ensiled corn;

(B) Baled, cubed, or ground hay; and

(C) Industrial hemp.

(b) "Farm products" does not include poultry and poultry products, timber products, nursery stock, commodities, or marijuana.

(8.5) "Industrial hemp" has the meaning set forth in section 35-61-101(7).

(9) "Livestock" has the same meaning as set forth in section 35-1-102(6).

(9.5) "Marijuana" has the same meaning as set forth in section 16(2)(f) of article XVIII of the Colorado constitution.

(10) "Owner" means any person in whom legal title to any farm product is vested, whether produced by him or her or acquired by purchase.

(11) "Person" includes an individual, a firm, an association, a partnership, a corporation, or the commissioner.

(12) "Processing" means the operation of drying, canning, fermenting, distilling, extracting, preserving, grinding, crushing, flaking, mixing, or otherwise changing the form of a farm product for the purpose of reselling the product.

(13) "Producer" means any person engaged in growing or producing any farm product.

(14) "Retail grocery merchant" means any person whose sales are more than fifty percent non-farm product grocery household merchandise.

(15) "Small-volume dealer" means any person who:

(a) Does not qualify as a "dealer" under subsections (7)(a)(II) to (7)(a)(V) of this section;

(b) Has a fixed or established place of business in Colorado;

(c) Buys less than twenty thousand dollars' worth of farm products or commodities, in aggregate, per year from the owners for processing or resale;

(d) Does not purchase in a single transaction two thousand five hundred dollars' worth or more of farm products or commodities, in aggregate; and

(e) Does not purchase farm products for commercial feeding of livestock.

§ 35-37-104. Application for license--rules

(1) No person shall act as a dealer, small-volume dealer, or agent without having obtained a license as provided in this article 37. Every person acting as a dealer, small-volume dealer, or agent shall file an application in writing with the commissioner for a license to transact the business of dealer, small-volume dealer, or agent, and the application shall be accompanied by the license fee provided for in section 35-37-105 for each specified class of business.

(2) The application in each case shall state the class or classes of farm products the applicant proposes to handle, the full name of the person applying for the license, and, if the applicant is a firm, exchange, association, or corporation, the full name of each member of the firm or the names of the officers of the exchange, association, or corporation. The application shall further state the principal business address of the applicant in the state of Colorado and elsewhere and the names of the persons authorized to receive and accept service of summons and legal notices of all kinds for the applicant. The applicant shall further satisfy the commissioner of his or her character, responsibility, and good faith in seeking to carry on the business stated in the application. In determining a person's character, the commissioner shall be governed by the provisions of section 24-5-101.

(3) In addition to the general requirements applicable to all classes of applications, as set forth in this section, each application for an agent's license shall include such information as the commissioner may consider proper or necessary, and the application shall include the name and address of the applicant and the name and address of each dealer or small-volume dealer represented or sought to be represented by said agent and the written endorsement or nomination of the dealer or small-volume dealer. No person shall be licensed as an agent unless all of the agent's principals are licensed under this article 37.

(4) Upon the applicant's filing of the proper application with the commissioner, accompanied by the proper fee, and when the commissioner is satisfied that the convenience and necessity of the industry and the public will be served thereby, the commissioner shall issue to the applicant a license entitling the applicant to conduct the business described in the application at the place named in the application until the date specified by the commissioner by rule or until the license has been suspended or revoked. The license of an agent shall expire upon the date of expiration of the license of the principal for whom the agent acts. The commissioner may also issue a license to each agent, with a separate agent's license being required for each principal.

Any dealer, small-volume dealer, or agent shall show the license upon the request of any interested person. Each licensed dealer, small-volume dealer, or agent shall post the person's license or a copy thereof in the person's office or salesroom in plain view of the public.

(5) Fraud or misrepresentation in making any application shall ipso facto work a revocation of any license granted pursuant thereto. All indicia of the possession of a license shall be at all times the property of the state of Colorado, and each licensee is entitled to the possession thereof only for the duration of said license.

(6) Any person licensed under article 36 of this title 35 may apply for a license as a dealer or small-volume dealer without paying the license fee otherwise required by section 35-37-105.

§ 35-37-105. License fee--renewal--rules

(1)(a) For filing the application described in section 35-37-104, each applicant for a license in each of the following categories shall pay to the commissioner a fee as determined by the agricultural commission, which fee shall be transmitted to the state treasurer for credit to the inspection and consumer services cash fund created in section 35-1-106.5:

(I) Dealers; except that a dealer who signs an affidavit stating that the dealer shall make payment in cash or by one of the other means specified in section 35-37-106(1)(e) for each transaction for farm products shall pay the same application fee as a small-volume dealer;

(II) Agents; and

(III) Small-volume dealers.

(b) For each fiscal year, commencing on July 1, twenty-five percent of the direct and indirect costs of administering and enforcing this article 37 shall be funded from the general fund. The agricultural commission shall establish a fee schedule to cover any direct and indirect costs not funded from the general fund.

(2) If any licensee fails for any reason to apply for the renewal of a license before an annual date specified by the commissioner by rule, the licensee shall, upon application for a renewal license and before the license is issued, pay a penalty as established by the agricultural commission, which shall be in addition to the license fee.

(3) Any person against whose surety a claim has been collected or any person against whom an irrevocable letter of credit has been drawn by the commissioner in accordance with the provisions of this article 37 shall not be licensed by the commissioner during the period of three years from the date of the collection; except that the commissioner may, in his or her discretion and consistent with the purpose of this article 37, issue a temporary license to the person for the period, subject to such restrictions as the commissioner deems reasonable and necessary.

(4) Any licensee who has a verified complaint pending against him or her with the commissioner shall not be issued a renewal license until the complaint has been settled to the satisfaction of the commissioner.

(5) Upon the failure of an applicant to file a bond or an irrevocable letter of credit meeting the requirements of section 11-35-101.5, within ninety days of the date of application, the application will be rendered void, and the license fee will not be refunded. Any subsequent application for a license shall require a new license fee.

(6) Whenever the commissioner deems it appropriate, the commissioner may require of any applicant for an initial license, any applicant for a renewal of a license, or any licensee the submission of a financial statement or an audit, prepared by a certified public accountant, or any other information to determine whether the person is in an adequate financial position to carry out his or her duties as a licensee.

§ 35-37-106. Bonds and irrevocable letters of credit--exemptions

(1)(a) Before any license is issued to any dealer, the applicant shall file with the commissioner a bond executed by the applicant as principal and by a surety company qualified and authorized to do business in this state as a surety or an irrevocable letter of credit meeting the requirements of section 11-35-101.5 in the sum of not less than two thousand dollars nor more than two hundred thousand dollars, at the discretion of the commissioner.

(b) The bond or irrevocable letter of credit must be conditioned upon compliance with this article 37 and upon the faithful and honest handling of farm products in accordance with this article 37 and shall cover any fees due the department of agriculture by the dealer and all costs and reasonable attorney fees incident to any suit upon the bond or irrevocable letter of credit. The bond or irrevocable letter of credit must be to the department of agriculture in favor of every producer, dealer, small-volume dealer, or owner and, in the instance of a bond, must remain in full force and effect until cancelled by the surety upon thirty days' prior written notice to the commissioner.

(c)(l) Any producer, owner, small-volume dealer, or other dealer within the state of Colorado claiming to be injured by the fraud, deceit, or willful negligence of, or failure to comply with this

article 37 by, any dealer may request the department of agriculture, as beneficiary, to demand payment on the irrevocable letter of credit or surety bond to recover the damages caused by the fraud, deceit, willful negligence, or failure to comply with this article 37.

(II) The surety on the bond or the issuer of the letter of credit is not liable to pay any claim pursuant to any action brought under this article 37 if the action is not commenced within one hundred eighty days after the date of the transaction, as that term is defined in section 35-36-116(13), on which the claim is based, or the date of the loss, as that term is defined in section 35-36-102(15), whichever is later.

(d) When any action is commenced on said bond or irrevocable letter of credit, the commissioner may require the filing of a new bond or irrevocable letter of credit, and failure of the licensee to file the new bond or irrevocable letter of credit within ten days after the commencement of said action constitutes grounds for the suspension or revocation of his or her license.

(e) No bond or irrevocable letter of credit shall be required of a dealer who pays for farm products in cash or with a bank-certified check, a bank cashier's check, an irrevocable electronic funds transfer, or a money order at the time the dealer obtains from the owner thereof possession or control of the farm products, or of an applicant for a license or a licensee operating under a bond required by the United States to secure the performance of his or her obligations; except that the bond shall include all obligations pertaining to Colorado farm products, and documentary evidence shall be furnished to the commissioner that the bond required by the United States is in full force and effect.

(f) The bond or irrevocable letter of credit required by section 35-36-119 shall apply to the activities as a dealer of any person licensed pursuant to article 36 of this title 35. The persons shall also be subject to the provisions of this section and section 35-37-107.

(2) Whenever the commissioner determines that a previously approved bond or irrevocable letter of credit is, or for any cause has become, insufficient, the commissioner may require an additional bond or irrevocable letter of credit or other evidence of financial responsibility to be given by a dealer to conform to the requirements of this article 37 or any rule promulgated pursuant to the provisions of this article 37. The failure of the dealer to comply with the commissioner's requirement within thirty days after written demand therefor constitutes grounds for the suspension or revocation of his or her license.

(3) Repealed.

§ 35-37-107. Investigations, hearings, and examinations

(1) For the purpose of enforcing the provisions of this article 37, the commissioner may receive complaints from persons against any dealer, small-volume dealer, agent, or person assuming or attempting to act as such and, upon the receipt of a complaint, may make any and all necessary investigations relative to the complaint.

(2) The commissioner upon his or her own motion may, and upon the verified complaint of any person shall, investigate any transactions involving any provisions of this article 37.

(3)(a) The commissioner, upon consent of the licensee or upon obtaining an administrative search warrant, shall have free and unimpeded access to all buildings, yards, warehouses, and storage facilities owned by a licensee in which any farm products are kept, stored, handled, processed, or transported.

(b) The commissioner, upon consent of the licensee or upon obtaining a search warrant, shall have free and unimpeded access to all records required to be kept and may make copies of the records.

(c) The commissioner shall have full authority to administer oaths and take statements, to issue subpoenas requiring the attendance of witnesses and the production of all books, memoranda, papers, and other documents, articles, or instruments, and to compel the disclosure by the witnesses of all facts known to them relative to the matters under investigation. Upon the failure or refusal of any witness to obey any subpoena, the commissioner may petition the district court, and, upon a proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey the order of the court shall be punishable as a contempt of court.

(4) The commissioner may examine the ledgers, books, accounts, memoranda, and other documents and the farm products, scales, measures, and other items in connection with the business of any licensee relating to whatever transactions may be involved.

(5) The commissioner shall not be required to investigate or act upon complaints regarding transactions that occurred more than one hundred twenty days prior to the date upon which the commissioner received the written complaint.

(6) If the investigation is against a licensee, the commissioner shall proceed to ascertain the names and addresses of all producers, dealers, small-volume dealers, or owners of farm products, together with the accounts unaccounted for or due and owing to them by the licensee, and shall request all the producers, dealers, small-volume dealers, or owners to file verified

statements of their respective claims with the commissioner. If a producer, dealer, small-volume dealer, or owner so requested fails, refuses, or neglects to file a verified statement in the office of the commissioner within thirty days after the date of the request, the commissioner shall thereupon be relieved of any further duty or action under this article 37 on behalf of said producer, dealer, small-volume dealer, or owner.

(7) In the course of any investigation, the commissioner may attempt to effectuate a settlement between the respective parties.

(8)(a) If the commissioner determines, after concluding an investigation on any complaint, that reasonable grounds exist to believe that a licensee has violated any of the provisions of this article 37, the commissioner shall notify the licensee that the complaint is valid and shall inform the licensee of his or her opportunity to request a hearing, in writing, on the complaint within ten days after the date of the notice.

(b) Upon the receipt of a request for a hearing from a licensee or if the commissioner determines that a hearing concerning any licensee is necessary, the commissioner shall cause a copy of the complaint or the grounds specified in section 35-37-108, together with a notice of the time and place of the hearing, to be served personally or by mail upon the licensee. Service shall be made at least ten days before the hearing, which shall be held in the city or town in which the business location of the licensee is situated, or in which the transactions involved allegedly occurred, or at the location deemed by the commissioner to be most convenient.

(c) The commissioner shall conduct the hearing pursuant to the provisions of section 24-4-105. Thereafter, the commissioner shall enter in his or her office a decision specifying the relevant facts established at the hearing. If the commissioner determines from the facts specified that the licensee has not violated any of the provisions of this article 37, the complaint shall be dismissed. If the commissioner determines from the facts specified that the licensee has violated any of the provisions of this article 37, and that the licensee has not yet made complete restitution to the person complaining, the commissioner shall determine the amount of damages, if any, to which the person is entitled as the result of the violation and enter an order directing the offender to pay the person complaining the amount on or before the date fixed in the order. A copy of the decision shall be furnished to all the respective parties to the complaint.

(9) As a result of the hearing, the commissioner may also enter any order suspending or revoking the license of a licensee or may place the licensee on probation if the commissioner determines that the licensee has committed any of the unlawful acts specified in section 35-37-118 or that the licensee has violated any of the provisions of this article 37.

(10)(a) If a person against whom an order, as specified in subsection (8)(c) of this section, is made and issued fails, neglects, or refuses to obey the order within the time specified in the order, the commissioner may thereupon issue a further order to that person directing him or her to show cause why his or her license should not be suspended or revoked for failure to comply with the order.

(b) In such case, a copy of the order to show cause, together with a notice of the time and place of the hearing thereupon, shall be served personally or by mail upon the person involved. Service shall be made at least ten days before the hearing, which shall be held in the city or town in which the business location of the licensee is situated or at any convenient place designated by the commissioner.

(c) The commissioner shall conduct the hearing pursuant to the provisions of section 24-4-105 and thereafter shall enter in his or her office an order and decision specifying the facts established at the hearing and either dismissing the order to show cause, or directing the suspension or revocation of the license held by the licensee, or making such other conditional or probationary orders as may be proper. A copy of the order and decision shall be furnished to the licensee.

(d) Nothing in this section shall be construed as limiting the power of the commissioner to revoke or suspend a license when satisfied of the existence of any of the facts specified in section 35-37-118.

(11) Whenever the absence of records or other circumstances makes it impossible or unreasonable for the commissioner to ascertain the names and addresses of all persons specified in subsection (6) of this section, the commissioner, after exercising due diligence and making a reasonable inquiry to secure said information from all reasonable and available sources, shall not be liable or responsible for the claims or the handling of claims that may subsequently appear or be discovered. After ascertaining all claims, assessments, and statements in the manner set forth in subsection (6) of this section, the commissioner may then demand payment on the bond or irrevocable letter of credit on behalf of those claimants whose claims have been determined by the commissioner as valid and, in the instance of a bond, may settle or compromise the claims with the surety company on the bond and execute and deliver a release and discharge of the bond involved. Upon the refusal of the surety company to pay the demand, the commissioner may bring an action on the bond on behalf of the producer, dealer, small-volume dealer, or owner.

(12) For the purpose of this section, a transaction is deemed to have occurred:

(a) On the date that possession of farm products is transferred by a claimant;

(b) On delayed payment transactions, on the contractual date of payment or, if there is no contractual date of payment, thirty days following the transfer of title.

(13) Complaints of record made to the commissioner and the results of his or her investigations may, in the discretion of the commissioner, be closed to public inspection during the investigatory period and until dismissed or until notice of hearing and charges is served on a licensee, unless otherwise provided by court order.

§ 35-37-108. Disciplinary powers--licenses

(1) The commissioner may deny any application for a license, or may refuse to renew a license, or may revoke or suspend a license, or may place a licensee on probation, as the case may require, if the licensee or applicant has:

(a) Violated any of the provisions of this article 37 or violated any of the rules promulgated by the commissioner pursuant to this article 37;

(b) Been convicted of a felony under the laws of this state, or of any other state, or of the United States; except that, in considering a conviction of a felony, the commissioner shall be governed by the provisions of section 24-5-101;

(c) Committed fraud or deception in the procurement or attempted procurement of a license;

(d) Failed or refused to file with the commissioner a surety bond or an irrevocable letter of credit, as required by section 35-37-106;

(e) Been determined by the commissioner to be in an inadequate financial position to meet liability obligations;

(f) Failed to comply with any lawful order of the commissioner concerning the administration of this article 37;

(g) Had a license revoked, suspended, or not renewed or has been placed on probation in another state for cause, if the cause could be the basis for the same or similar disciplinary action in this state.

(2) All proceedings concerning the denial, refusal to renew, revocation, or suspension of a license or the placing of a licensee on probation shall be conducted pursuant to the provisions of section 35-37-107 and article 4 of title 24.

(3) Any previous violation of the provisions of this article 37 by the applicant or any person connected with the applicant in the business for which the applicant seeks to be licensed, or in the case of a partnership or corporation applicant any previous violations of the provisions of this article 37 by a partner, officer, director, or stockholder of more than thirty percent of the outstanding shares, is sufficient grounds for the denial of a license.

§ 35-37-109. Cease-and-desist order--suit for restraining order

(1) If the commissioner determines that there exists a violation of any provision of this article 37 or of any rule promulgated under the authority of this article 37, the commissioner may issue a cease-and-desist order, which may require any person to cease functioning as a dealer or small-volume dealer, except for those functions necessary to prevent spoilage of products stored in the dealer's warehouse. The order shall set forth the provisions alleged to have been violated, the facts alleged to have constituted the violation, and the requirement that all functions, except those necessary to prevent spoilage, be ceased forthwith. At any time after the date of the service of the order to cease and desist, the person may request a hearing on the question of whether or not the violation has occurred. The hearing shall be concluded in not more than ten days after the request and shall be conducted pursuant to the provisions of article 4 of title 24.

(2) In the event that any person fails to comply with a cease-and-desist order within twenty-four hours after service, the commissioner may bring a suit pursuant to section 35-37-116(2) to prevent any further or continued violation of the order.

(3) No stay of a cease-and-desist order shall be issued before a hearing thereon involving both parties.

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

§ 35-37-110. Appeal

Any action of the commissioner with reference to the administration of this article 37 may be reviewed by any court of competent jurisdiction pursuant to the provisions of section 24-4-106 only after all administrative remedies have been exhausted.

§ 35-37-111. Credit sale contracts--rules

(1) When a dealer or small-volume dealer purchases farm products for which payment has not been made, the dealer or small-volume dealer, within thirty days after the receipt of the farm products, shall provide the producer or owner of the farm products with a credit sale contract. The credit sale contract must contain the following information:

(a) The type and quantity of farm products purchased and the date of purchase;

(b) The charges for handling, if any;

(c) The name and address of the producer or owner and the signature of the dealer or small-volume dealer or the authorized agent thereof;

(d) The contract number required pursuant to subsection (4) of this section; and

(e) One or more statements specified by the commissioner by rule, including one that warns a producer that entering into a credit sale contract entails a risk that the bond may not completely protect the producer from loss in the event of a failure of the dealer or small-volume dealer.

(2) Records of a dealer or small-volume dealer shall be retained for a period of two years and shall reflect those credit sale contracts that have been cancelled and those that are still open. The records shall be kept at the dealer's or small-volume dealer's place of business at all times.

(3) An annual report of the status of all of a dealer's or small-volume dealer's credit sale contracts may be required by the commissioner.

(4) All credit sale contracts entered into by a dealer or small-volume dealer shall be consecutively numbered by the dealer, and copies thereof shall be made available for inspection by the commissioner or the commissioner's authorized agents.

§ 35-37-112. Records of dealers

(1) Every dealer handling farm products for any consignor having received any farm products on commission for sale shall promptly make and keep a correct record, showing in detail the following with reference to the handling, sale, or storage of the farm products:

- (a) The name and address of the consignor;
- (b) The date received;
- (c) The condition and quantity upon arrival;
- (d) The date of the sale for the account of the consignor;
- (e) The price for which sold;
- (f) An itemized statement of the charges to be paid by the consignor in connection with the sale;
- (g) The names and addresses of the purchasers if the dealer has any financial interest in the business of the purchasers or if the purchasers have any financial interest in the business of the dealer, directly or indirectly, as a holder of the other's corporate stock, as a copartner, as a lender or borrower of money to or from the other, or in any other capacity;
- (h) A lot number or other identifying mark for each consignment, which number or mark shall appear on all sales tags or other essential records needed to show what the product actually sold for;
- (i) Any claims that have been or may be filed by the dealer against any person for overcharges or for damages resulting from the injury or deterioration of the farm products by the act, neglect, or failure of the person; and the records shall be open to the inspection of the commissioner and the consignor for whom the claims are made.

§ 35-37-113. Records of small-volume dealers

Each small-volume dealer shall maintain records of all aspects of each purchase of farm products in the form and manner required by the commissioner.

§ 35-37-114. Daily reports and settlements

(1) When requested by his or her consignor, a dealer, before the close of the next business day following the sale of any farm products consigned to the dealer, shall transmit or deliver to the

owner or consignor a true written report of the sale, showing the amount sold and the selling price. Remittance in full of the amount realized from the sale, including all collections, overcharges, and damages, less the agreed commission and other charges together with a complete account of sales, shall be made to the consignor within ten days after the receipt of the money by the dealer unless otherwise agreed to in writing. In the account, the names and addresses of purchasers need not be given, except as required in section 35-37-112.

(2) Every dealer shall retain a copy of the record covering each consignment transaction for a period of one year after the date thereof, which copy shall, at all times, be available for, and open to, the inspection of the commissioner and the consignor or the authorized representative of either.

(3) Every dealer shall pay for farm products delivered to him or her on the date and in the manner specified in the contract with the owner or, if no date is set by the contract or on the date of the delivery, within thirty days after the date of the delivery or the taking possession of the farm products.

§ 35-37-115. Pooled consignment

Local produce or fruit associations or other shippers located in the neighborhood where products are grown may receive a reasonable compensation for loading, shipping, and securing persons to handle the same on commission in markets away from the locality where grown. Dealers receiving consignments of farm products from a number of consignors under written agreements or under written authority from them to market the products in season and prorate the net proceeds of the consignments among all consignors or to market the same in connection with other products of the same class may withhold the proportion of the net returns of sales of the consignments as may be necessary to carry out the agreements pertaining to the consignments until final sales have been made. In every case, final settlement shall be made within fifteen days after the final sale of the consignment, unless otherwise agreed to in writing by the consignor.

§ 35-37-116. Enforcement

(1) The commissioner shall be the enforcing authority of this article 37, and the commissioner or the commissioner's authorized representative shall have free and unimpeded access to all places of business and all business records of a licensee pertinent to any proper inquiry in the administration of this article 37. Any person in whom the enforcement of any provision of this article 37 is vested has the power of a peace officer as to the enforcement.

(2) Whenever, upon sufficient evidence satisfactory to the commissioner, the commissioner determines a person has engaged in or is about to engage in any act or practice constituting a violation of any provision of this article 37 or of any rule or of any order promulgated under this article 37, the commissioner may apply to a court of competent jurisdiction to temporarily or

permanently restrain or enjoin the act or practice in question and to enforce compliance with this article 37 or any rule or order pursuant to this article 37. In the action, the commissioner shall not be required to plead or prove irreparable injury or the inadequacy of a remedy at law. Under no circumstances shall the court require the commissioner to post a bond.

§ 35-37-117. Civil penalties

(1) Any person who violates any provision of this article 37 or any rule enacted pursuant to this article 37 is subject to a civil penalty as determined by the commissioner. The maximum penalty shall not exceed one thousand dollars per violation per day.

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

(3) If the commissioner is unable to collect a civil penalty or if any person fails to pay all or any portion of a civil penalty, the commissioner may recover the amount, plus costs and attorney fees, by action in any court of competent jurisdiction.

(4) Under circumstances where the commissioner did not have probable cause to impose a civil penalty, the person charged may recover his or her costs and attorney fees from the department of agriculture.

(5) All money collected from civil penalties pursuant to the provisions of this section shall be transmitted to the state treasurer and credited to the inspection and consumer services cash fund created in section 35-1-106.5.

(6) Before imposing a civil penalty, the commissioner may consider the effect of the penalty on the ability of the person charged to stay in business.

§ 35-37-118. Unlawful acts

(1) It is unlawful and a violation of this article 37 for any person to:

(a) Make fraudulent charges or returns for the handling, sale, or storage or for the rendering of any service in connection with the handling, sale, or storage of any farm products. Violation of this subsection (1)(a) shall constitute a class 6 felony.

(b) Willfully fail or refuse to render a true account of sales or storage or to make a settlement thereon or to pay for farm products received within the time and in the manner required by this article 37. Violation of this subsection (1)(b) shall constitute a class 6 felony.

(c) Intentionally make false or misleading statements as to the market conditions for farm products or false or misleading statements as to the condition, quality, or quantity of farm products received, handled, sold, or stored. Violation of this subsection (1)(c) shall constitute a class 6 felony.

(d) Engage in fictitious sales, in collusion, or in unfair practices to defraud the owners. Violation of this subsection (1)(d) shall constitute a class 6 felony.

(e) Act as a dealer, small-volume dealer, or agent without having obtained a license or act as a dealer without having filed a surety bond or an irrevocable letter of credit, as provided in this article 37. Violation of this subsection (1)(e) shall constitute a class 6 felony.

(f) Willfully convert to his or her own use or benefit the farm products of another. Violation of this subsection (1)(f) shall constitute theft, as defined in section 18-4-401.

(g) Commit fraud or deception in the procurement or attempted procurement of a license. Violation of this subsection (1)(g) shall constitute a class 1 misdemeanor.

(h) Fail to comply with any lawful order of the commissioner concerning the administration of this article 37. Violation of this subsection (1)(h) shall constitute a class 1 misdemeanor.

(i) Interfere with or hinder an authorized representative of the commissioner while performing his or her duties under this article 37. Violation of this subsection (1)(i) shall constitute a class 1 misdemeanor.

(j) If licensed as a dealer or small-volume dealer, sell farm products for less than the current market price to any person with whom the dealer has any financial connection, directly or indirectly, either as an owner of the corporate stock of a corporation, as a copartner, or in any other capacity, or sell any farm products out of the purchase price of which said dealer or small-volume dealer receives, directly or indirectly, any portion thereof other than the commission allowed in section 35-37-114. Violation of this subsection (1)(j) shall constitute theft, as defined in section 18-4-401.

(k) Act as a dealer, small-volume dealer, or agent and, with intent to defraud, make, draw, utter, or deliver any check, draft, or order for the payment of money upon any bank or other depository to the owner for the purchase price of any farm products or any part thereof upon obtaining possession or control thereof, when at the time of the making, drawing, uttering, or delivery the maker or drawer has not sufficient funds in or credit with the bank or other depository for the payment of the check, draft, or order in full upon its presentation. The making, drawing, uttering, or delivery of the check, draft, or order shall be prima facie evidence of an intent to defraud. "Credit", as used in this subsection (1)(k), means an arrangement or understanding with the bank or depository for the payment of the check, draft, or order. Violation of this subsection (1)(k) shall constitute fraud by check, as defined in section 18-5-205.

(l) If acting as a dealer who has signed an affidavit in accordance with section 35-37-105(1)(a)(l), fail to make payment in cash or by one of the other means specified in section 35-37-106(1)(e) for any transaction without first complying with the bonding requirements of section 35-37-106. Violation of this subsection (1)(l) shall constitute a class 1 misdemeanor.

(m) If licensed as a small-volume dealer, purchase twenty thousand dollars' worth or more of farm products in one year from the owner for processing or resale or purchase two thousand five hundred dollars' worth or more of farm products in any single transaction from the owner for processing or resale. Violation of this subsection (1)(m) shall constitute a class 1 misdemeanor.

§ 35-37-119. Penalties

(1) Any person who violates any of the provisions of section 35-37-118(1)(a), (1)(b), (1)(c), (1)(d), or (1)(e) commits a class 6 felony and shall be punished as provided in section 18-1.3-401. Any person who violates any of the provisions of section 35-37-118(1)(f) or (1)(j) commits theft, as defined in section 18-4-401. Any person who violates any of the provisions of section 35-37-118(1)(g), (1)(h), (1)(i), (1)(l), or (1)(m) commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501. Any person who violates any of the provisions of section 35-37-118(1)(k) commits fraud by check, as defined in section 18-5-205.

(2) Any person who violates any other provision of this article 37 commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501.

(3) Civil suits and criminal prosecutions arising by virtue of any of the provisions of this article 37 may be commenced and tried either in the county in which the farm products were received by the dealer, small-volume dealer, or agent, or in the county in which the principal place of business of the dealer, small-volume dealer, or agent is located, or in the county in which the violation of this article 37 occurred. The attorney general or the district attorney for the judicial district in which a violation of any of the provisions of this article 37 occurs shall, upon the request of any enforcing officer or other interested person, prosecute the violation.

§ 35-37-120. Administration--rules--delegation of duties

(1) The commissioner may promulgate such rules in accordance with article 4 of title 24 as are necessary for the administration of this article 37.

(2) The powers and duties of the commissioner in this article 37 may be delegated to qualified employees of the department of agriculture.

§ 35-37-121. Penalties for theft of farm products

(1) If farm products are contracted for sale to an out-of-state purchaser, the purchaser shall be subject to the jurisdiction of the courts of this state in accordance with the provisions of section 13-1-124(1)(a). The seller shall be entitled to all remedies at law in seeking the return of the farm products when the purchaser takes delivery of the products but is unable or refuses to make payment for said products and the products have been physically removed to another state. The action shall be given priority on the court's docket.

(2) If any person purchases farm products in this state and removes the products to another state and issues a check in payment for those products knowing there are insufficient funds, as defined in section 18-5-205(1)(d), to pay for said products, the person commits theft of farm products and shall be punished as provided in section 18-4-401(2).

§ 35-37-122. Repeal of article

This article 37 is repealed, effective July 1, 2020. Before its repeal, this article 37 is scheduled for review in accordance with section 24-34-104.