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Requirements for Grain Dealers:

Colorado



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Requirements for Grain Dealers: Colorado

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- 5) Failure/Liquidation:
- 6) Prompt Payment:
- 7) Penalties: [Colo. Rev. Stat. §§ 35-36-104 to 106](#)
- 8) Lien:

Colo. Rev. Stat. Tit. 35, Art. 36

Current through legislation effective March 22, 2024 of the Second Regular Session, 74th General Assembly (2024).

§ 35-36-101. Short title

The short title of this article 36 is the “Commodity Handler and Farm Products Act”.

§ 35-36-102. Definitions

As used in this article 36, unless the context otherwise requires:

- (1) “Agent” means a person who, on behalf of a dealer or small-volume dealer, buys, receives, contracts for, or solicits any farm products from or sells farm products for the owner of the farm products or who negotiates the consignment or purchase of any farm products on behalf of a dealer or small-volume dealer.
- (2) “Bailee” means a person who, by a negotiable warehouse receipt or other document of title, acknowledges possession of goods and contracts to deliver them.
- (3) “Bailment” means the act of delivering goods or personal property to another in trust.
- (4) “Commercial feeding” means the feeding of livestock by a person who receives compensation from the owner of the livestock for the feeding.
- (5) “Commission” means the state agricultural commission created in section 35-1-105.
- (6) “Commissioner” means the commissioner of agriculture or the commissioner's designee.



(7) “Commodity” means unprocessed small, hard seeds or fruits such as wheat, corn, oats, barley, rye, sunflower seeds, soybeans, beans, grain sorghum, industrial hemp, and such other seeds or fruits as the commissioner may determine.

(8)

(a) “Commodity handler” means a person:

(I) Engaged in buying any commodities from the owner for processing or resale;

(II) Engaged in receiving and taking possession of any commodities from the owner for storage or safekeeping;

(III) Engaged in soliciting or negotiating sales of commodities between the vendor and purchaser respectively;

(IV) Who receives on consignment or solicits from the owner of a commodity any kind of commodity for sale on commission on behalf of the owner, who accepts any commodity in trust from the owner of the commodity for the purpose of resale, or who sells or offers for sale on commission any commodity or in any way handles any commodity for the account of the owner of the commodity; or

(V) Engaged in buying any commodity from the owner of the commodity 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.

(b) “Commodity handler” does not include:

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

(II) A producer as defined in 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.

(9) “Compensation” means something of value or benefit, whether in cash, in kind, or in any other form.

(10) “Consignor” includes a person who ships or delivers to a dealer or small-volume dealer any farm products for handling, sale, or resale.

(11) “Credit sale contract” means a contract for the sale of a commodity or a farm product when the sale price is to be paid on a date later than thirty days after delivery of the commodity or farm product



to the buyer and includes those contracts commonly referred to as deferred payment contracts, deferred pricing contracts, and price later contracts.

(12)

(a) “Dealer” means a person:

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

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

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

(IV) Who receives on consignment or solicits from the owner of a farm product any kind of farm product for sale on commission on behalf of the owner, who accepts any farm product in trust from the owner of the farm product 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 of the farm product; or

(V) Engaged in buying any farm products or commodities from the owner of the farm products or commodities 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.

(b) “Dealer” does not include:

(I) A bona fide retail grocery merchant or restaurateur having a fixed or established place of business in Colorado if 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 as defined in 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.

(13) “Department” means the department of agriculture.

(14)

(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, marijuana, or natural medicine as defined in section 12-170-104(12).

(15) “Financial statement” means a statement prepared according to generally accepted accounting principles that accurately presents the financial condition of an applicant or licensee and that includes, at a minimum, a balance sheet and a statement of income.

(16) “Forwarded commodities” means commodities sent to a terminal warehouse and put on open storage in the name of the forwarding warehouse operator.

(17) “Handling” means buying commodities for resale or processing, brokering commodities, or receiving and loading out commodities tendered for storage.

(18) “Industrial hemp” has the meaning set forth in section 35-61-101(7).

(19) “Livestock” has the meaning set forth in section 35-1-102(6).

(20) “Loss” means any monetary loss to a producer or owner that is of an extraordinary nature and that includes but is not limited to, bankruptcy, embezzlement, theft, fraud, or negligence.

(21) “Marijuana” has the meaning set forth in section 16(2)(f) of article XVIII of the Colorado constitution.

(22) “Market value” means the value required by law to be used by insurance underwriters in paying for losses of commodities insured for their actual value.

(23) “Negotiable warehouse receipt” means a receipt that specifies by its terms that the goods are to be delivered to the bearer or to the order of a named person. Any other receipt is nonnegotiable.



(24) “Owner” means any person in whom legal title to any commodity or farm product is vested, whether produced by the owner or acquired by purchase.

(25) “Person” includes:

- (a) An individual, firm, association, partnership, or corporation; or
- (b) The commissioner.

(26) “Processing” means the operation of canning, drying, fermenting, distilling, extracting, preserving, grinding, crushing, flaking, mixing, or otherwise changing the form of a commodity or farm product for the purpose of selling or reselling any of the resulting products.

(27) “Producer” means a person engaged in growing commodities or farm products or producing farm products.

(28) “Provisional insurance coverage” means a certificate or any other satisfactory evidence of fire and extended coverage insurance issued by an insurance company authorized to do business in this state insuring every commodity in the custody of a warehouse operator, whether held for others or owned by the warehouse operator, at the full local market value of each commodity.

(29) “Public warehouse” includes an elevator, mill, warehouse, or other structure in which commodities are received from one or more members of the public for storage.

(30) “Retail grocery merchant” means a person whose sales consist of more than fifty percent nonfarm-product and noncommodity grocery household merchandise.

(31) “Scale ticket” means a receipt issued for a commodity that names the person to whom it is issued and the kind and grade of the commodity stored.

(32) “Settlement sheet” means a summary of a commodity handler's or small-volume commodity handler's transactions with an owner.

(33) “Small-volume commodity handler” means a person who:

- (a) Has a fixed or established place of business in this state;
- (b) Engages in commodities handling;
- (c) Buys less than two hundred fifty thousand dollars' worth of commodities and farm products per year from owners for processing or resale; and
- (d) Does not purchase commodities for commercial feeding of livestock.

(34) “Small-volume dealer” means a person who:



- (a) Does not qualify as a “dealer” under subsections (12)(a)(II) to (12)(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; and
- (d) Does not purchase farm products for commercial feeding of livestock.

(35) “Storage” means the holding of a commodity or farm product for another by a person who does not directly own the commodity or farm product. “Storage” does not include transportation of a commodity or farm product.

(36) “Terminal warehouse” means a public warehouse licensed by the department, the United States department of agriculture, or any state that has a warehouse examination cooperative agreement with Colorado or the United States department of agriculture.

(37) “Warehouse operator” includes a person owning, operating, or controlling a public warehouse.

§ 35-36-103. Commissioner – rules – delegation of powers and duties

(1)

(a) The commissioner shall promulgate rules in accordance with article 4 of title 24 as are necessary for the administration of this article 36. On or before December 31, 2020, the commissioner must promulgate rules that include rules regarding:

- (I) Financial assurance requirements, including a schedule for applicants to file a bond with the commissioner;
- (II) Requirements for maintaining records;
- (III) Initial and renewal license requirements;
- (IV) Requirements for credit sale contracts;
- (V) Requirements for warehouse operations; and
- (VI) The capacity of animal feeding operations for purposes of this article 36.

(b) Repealed by Laws 2020, Ch. 160, § 2, eff. Sept. 1, 2021.

(2) The commissioner is the enforcing authority of this article 36, and the commissioner or the commissioner's authorized representative has free and unimpeded access to all places of business and all business records of a licensee licensed under part 2 or part 3 of this article 36 that are pertinent to any proper inquiry in the administration of this article 36.



Any person in whom the enforcement of this article 36 is vested has the power of a peace officer as to the enforcement.

(3) The commissioner may delegate the commissioner's powers and duties set forth in this article 36 to qualified employees of the department.

§ 35-36-104. Cease-and-desist order—restraining order

(1) If the commissioner determines that there exists a violation of this article 36 or of any rule promulgated under the authority of this article 36, the commissioner may issue a cease-and-desist order, which may require a person to cease functioning as a commodity handler, small-volume commodity handler, dealer, small-volume dealer, or agent except for those functions necessary to prevent spoilage of products stored in the person's public warehouse or a dealer's warehouse or for the continued commercial feeding of livestock. The order must set forth the provision 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 or for the continued commercial feeding of livestock, cease immediately. 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 the violation has occurred. The hearing shall be concluded in not more than ten days after the request and shall be conducted pursuant to article 4 of title 24.

(2) If a person fails to comply with a cease-and-desist order within twenty-four hours after service, 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 36 or any rule or order pursuant to this article 36. In the action, the commissioner is not required to plead or prove irreparable injury or the inadequacy of a remedy at law. The court shall not require the commissioner to post a bond.

(3) A stay of a cease-and-desist order shall not be issued before a hearing on the order involving both parties.

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

§ 35-36-105. Civil penalties

(1) A person who violates this article 36 or any rule enacted pursuant to this article 36 is subject to a civil penalty as determined by the commissioner. The maximum penalty is one thousand dollars per violation per day.

(2) A civil penalty shall not 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 the person's costs and attorney fees from the department.

(5) The commissioner shall transmit all money collected from civil penalties pursuant to this section to the state treasurer, who shall credit it 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.

§ 35-36-106. Penalties

(1) A person who violates section 35-36-217(1)(a) to (1)(e) or (1)(j) or section 35-36-313(1)(a) to (1)(e) commits a class 6 felony and shall be punished as provided in section 18-1.3-401. A person who violates section 35-36-217(1)(f) or 35-36-313(1)(f) or (1)(j) commits theft, as defined in section 18-4-401. A person who violates section 35-36-217(1)(l) or 35-36-313(1)(k) commits fraud by check, as defined in section 18-5-205. A person who violates section 35-36-217(1)(g) to (1)(i) commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501.

(2) A person who violates any other provision of this article 36 commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501.

(3) Civil suits and criminal prosecutions arising by virtue of this article 36 may be commenced and tried either in the county in which the commodities or farm products were received by the commodity handler, small-volume commodity handler, dealer, small-volume dealer, or agent, or in the county in which the principal place of business of the commodity handler, small-volume commodity handler, dealer, small-volume dealer, or agent is located, or in the county in which the violation of this article 36 occurred. The attorney general or the district attorney for the judicial district in which the violation of this article 36 occurs shall, upon the request of any enforcing officer or other interested person, prosecute the violation.

§ 35-36-107. Appeal

Any action of the commissioner with reference to the administration of this article 36 may be reviewed by any court of competent jurisdiction pursuant to section 24-4-106 only after all administrative remedies have been exhausted.

§ 35-36-201. Licenses – Commodity Handler – Rules

(1)

(a) A person shall not act as a commodity handler in this state without having first obtained a license from the department.



(b) A small-volume commodity handler need not obtain a license.

(2) Every person acting as a commodity handler in this state shall, each year before the date specified by the commissioner by rule, obtain or renew a license from the department.

§ 35-36-202. Exemptions

(1) The provisions of this part 2 that apply to warehouse operators do not apply to the owner or operator of a public warehouse or other facility where the owner or operator:

(a) Operates a public warehouse in this state with a valid license issued either by the United States department of agriculture or under the “United States Warehouse Act”, 7 U.S.C. sec. 241 et seq.;

(b) Receives only commodities that the owner or operator has purchased, that the owner or operator is processing or cleaning for the owners of the commodities, or that the owner or operator is maintaining for such other purposes as the department may, by rule, prescribe; and

(c) Keeps written evidence, as required by the department, that clearly shows that the warehouse operator maintains the commodities for one or more of the purposes set forth in subsection (1)(a) or (1)(b) of this section. The department shall consider a commodity left or deposited with a warehouse operator whose records do not include evidence that the commodity was left or deposited for one or more of the purposes set forth in subsection (1)(a) or (1)(b) of this section as a commodity deposited for storage and handling.

§ 35-36-203. Commodity handler licenses – application requirements – fees

(1)

(a) An applicant for a commodity handler license shall pay, for each year in which the license is to be valid, a license fee established by the commission, which license fee the department shall collect and transmit to the state treasurer, who shall credit the money to the inspection and consumer services cash fund created in section 35-1-106.5.

(b) For each fiscal year, commencing on July 1, twenty-five percent of the direct and indirect costs of administering and enforcing this article 36 shall be funded from the general fund. The commission shall establish a fee schedule to cover any direct and indirect costs not funded from the general fund.

(2) Application for a commodity handler license under this section shall be made to the department upon forms furnished by the department. The application must include the following information:



(a) The name and address of the applicant 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;

(b) The principal business address of the applicant in the state of Colorado and in every other state in which the applicant does business and the names of the persons authorized to receive and accept service of summons and legal notices of all kinds on behalf of the applicant in each state. The applicant must satisfy the commissioner of its character, responsibility, and good faith in seeking to carry on the business stated in the application. The commissioner shall make a determination of a person's character in accordance with section 24-5-101.

(c) The location of each public warehouse of the applicant;

(d) The total rated storage capacity in bushels of each public warehouse;

(e) The tariff schedule of charges to be made at each public warehouse for the handling, storage, and shipment of commodities during the license year; and

(f) Any other information that the commissioner deems reasonably necessary to carry out the purposes of this part 2.

(3) The commissioner shall revoke any license granted as a result of an application that is found to have been made through fraud or misrepresentation. All indicia of the possession of a license is the property of the state of Colorado, and each licensee is entitled to the possession of the indicia only while the license remains valid and current.

§ 35-36-204. Licenses – requirements – rules

(1) To receive or maintain a license, each applicant or licensee for an initial or renewal license must satisfy the following requirements:

(a)

(I) Except as provided in subsection (1)(a)(II) of this section, the applicant or licensee shall furnish the commissioner with evidence of minimum provisional insurance coverage in an amount sufficient to protect the applicant's storage obligations. If, at any time, the commissioner evaluates an applicant's provisional insurance coverage to be insufficient, the commissioner may require such additional insurance as the commissioner considers sufficient. Failure to provide evidence of the additional insurance within thirty days after written notice from the commissioner constitutes grounds for the suspension or revocation of the license.



(II) A small-volume commodity handler need not comply with subsection (1)(a)(I) of this section.

(b)

(I) Except as provided in subsection (1)(b)(III) of this section, the applicant must furnish the commissioner with a financial statement that presents accurately the applicant's or licensee's financial condition. The commissioner may promulgate rules that clearly state the information required from each applicant or licensee under this section. Any financial statement submitted to the commissioner in support of a license application made pursuant to this part 2 is confidential.

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

(III) A small-volume commodity handler need not comply with the financial statement submission requirement set forth in subsection (1)(b)(I) of this section.

(2) If a licensee fails to apply for license renewal 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 commission. The penalty is in addition to the license fee.

§ 35-36-205. Disciplinary powers – licenses

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

(a) Violated this part 2 or section 35-36-104 or violated any of the rules promulgated by the commissioner pursuant to this article 36;

(b) Failed to place and keep the premises of the licensed business in the manner required under this part 2;

(c) Been convicted of a felony under the laws of this state, or of any other state, or of the United States; except that, in consideration of the conviction of a felony, the commissioner is governed by section 24-5-101;

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



(e) With respect to a commodity handler applicant or licensee, failed or refused to execute and deliver to the commissioner a surety bond as required by section 35-36-216;

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

(g) Failed to comply with any lawful order of the commissioner concerning the administration of this part 2; or

(h) 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 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 article 4 of title 24.

(3) Any previous violation of this part 2 or section 35-36-104 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 this part 2 or section 35-36-104 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.

§ 35-36-206. Bailment of commodities

(1) Acceptance of commodities for storage by a warehouse operator constitutes a bailment and not a sale. Stored commodities are not subject to seizure upon process of a court in an action against the bailee, except upon action by owners of the stored commodities or the commissioner to enforce the terms of the bailment; but, in the event of the failure or insolvency of a bailee, commodities shall be first applied exclusively to the settlement on an equal basis of all outstanding negotiable warehouse receipts and other open storage obligations for commodities so stored with the bailee.

(2) Forwarded commodities shall be used only to meet the storage obligation to the forwarding warehouse operator.

(3) The purchase of a commodity does not constitute a bailment.

§ 35-36-207. Credit sale contracts – rule

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

(a) The class, grade, and quantity of the commodities purchased, and the date of the purchase;



- (b) The charges for handling, if any;
- (c) The name and address of the producer or owner and the signature of the commodity handler;
- (d) The contract number;
- (e) The words “not a storage contract” printed in block capital letters in bold-faced type, conspicuously on the first page of the contract;
- (f) 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 commodity handler.

(2)

(a) A commodity handler or a small-volume commodity handler shall retain records for a period of two years and shall keep the records at the commodity handler's or the small-volume commodity handler's place of business at all times.

(b)

(I) With respect to a credit sale contract, a commodity handler shall retain records for a period of two years after the date of completion of the credit sale contract.

(II) The records must reflect those credit sale contracts that have been canceled and those that are still open and be kept at the commodity handler's place of business at all times.

(3) The commissioner shall require an annual report of the status of the credit sale contracts along with the financial statement required in section 35-36-204(1)(b).

(4) A commodity handler or small-volume commodity handler shall consecutively number all credit sale contracts entered into by the commodity handler and make available copies of the credit sale contracts for inspection and examination by the commissioner or the commissioner's authorized agents.

(5) A commodity handler issuing credit sale contracts shall maintain allowable net assets of not less than twenty-five thousand dollars and shall maintain reserves in an amount equaling or exceeding one hundred percent of the value of all of that commodity handler's open credit sale contracts, which value shall be determined with reference to the daily bid price. The reserves may be in the form of any one or a combination of the following:

(a) Cash;

(b) Commodity assets, including commodities and warehouse receipts or other evidence of storage of commodities;



(c) Credit sale contracts with other commodity handlers licensed by the department; or

(d) An irrevocable letter of credit in favor of the commissioner, which letter of credit is subject to section 35-36-216.

(6) A small-volume commodity handler shall not enter into or offer to enter into a credit sale contract.

§ 35-36-208. Commodity grades established – rules

The department may promulgate rules concerning commodity grades in accordance with the standards established by the United States department of agriculture as the official grain standards of the United States government.

§ 35-36-209. Negotiable warehouse receipts – rule

(1) A negotiable warehouse receipt must be either a paper or an electronic document. At no time may a paper receipt and an electronic receipt represent the same lot of the commodity. A licensee may issue warehouse receipts by use of a written warehouse receipt system, an electronic warehouse receipt system, or both.

(2) The department is the sole source of paper negotiable warehouse receipts and shall furnish those receipts at cost.

(3) Instead of a paper document, a licensee may issue an electronic negotiable version of a warehouse receipt generated by a vendor licensed and approved by the United States department of agriculture if the receipt contains the same information as the paper version of a warehouse receipt. The electronic version of a warehouse receipt carries the same rights and obligations as the paper version. A holder of an electronic version of a warehouse receipt may redeem the warehouse receipt by applying an electronic signature registered and authenticated by a vendor credited by the United States department of agriculture.

(4) The commissioner may promulgate rules regarding the issuance, use, and records requirements of negotiable warehouse receipts.

§ 35-36-210. Use of scale tickets and negotiable warehouse receipts

(1) It is unlawful to issue paper negotiable warehouse receipts other than those furnished by the department. A licensee shall issue these receipts consecutively, as numbered, and each receipt must state the date on which it is actually issued.

(2) Nothing in this part 2 prevents the issuance of nonnegotiable scale tickets or other nonnegotiable evidence of a similar nature showing the date on which the commodities were received, the quantities received, and the condition of the commodities upon their delivery.

(3) When partial withdrawal of a commodity is made by an owner, the warehouse operator shall make an appropriate



notation of the partial withdrawal on the depositor's nonnegotiable warehouse receipt or on such other records as may be prescribed by the department. If, before the partial withdrawal of the commodity, the warehouse operator has issued a negotiable warehouse receipt to the owner, the warehouse operator shall claim, cancel, and replace it with a new negotiable warehouse receipt, showing the amount of the owner's commodity remaining in the public warehouse.

(4) Every commodity handler or small-volume commodity handler receiving commodities for storage or handling shall immediately, upon receipt of each load, issue to every person delivering the commodity a scale ticket, which must contain the net weight of each separate draft or load of the commodity and the dockage, if any, to be levied at the time of delivery, and such other information as may be required by the department.

(5) Acceptance of commodities for storage by a warehouse operator for which a negotiable warehouse receipt is issued constitutes a bailment process and not a sale. If a warehouse operator fails to claim and cancel a negotiable warehouse receipt issued on delivery for commodities stored in the warehouse operator's public warehouse and the negotiation of which would transfer the right of possession of that commodity, the warehouse operator is liable, to a good faith purchaser for value, for the warehouse operator's failure to deliver to the purchaser all the commodities specified in the receipt. This liability applies whether the purchaser acquired title to the negotiable warehouse receipt before, on, or after the delivery of any part of the commodity by the warehouse operator.

§ 35-36-211. Commodity handler records – separate and distinct – time of maintenance – definition

(1) A commodity handler or small-volume commodity handler operating another business in conjunction with, or in proximity to, the handler's commodity handling business shall keep a complete set of records for the commodity handling business, entirely separate and distinct from the accounts and records of that other business. The deposits of commodities for the account of another business or for commodities owned by the commodity handler or small-volume commodity handler shall be entered in the books of the commodity handler or small-volume commodity handler in the same manner as those of other depositors. For the purpose of this section, “other business” means any other separate and legally established enterprise that is distinct and separate from the legal and financial transactions of the commodity handling business.

(2) Commodity handlers or small-volume commodity handlers shall maintain adequate records and systems for the filing and accounting of negotiable warehouse receipts, canceled negotiable warehouse receipts, scale tickets, and other documents and transactions necessary or common to the commodity handling industry. A commodity handler or small-volume commodity handler shall retain canceled negotiable warehouse receipts,



copies of scale tickets, and copies of other documents evidencing ownership or ownership liability for a period of at least three years after the date of cancellation.

(3) A commodity handler or small-volume commodity handler shall post a position report daily; however, if a daily position report poses a substantial hardship, the commissioner may authorize, in writing, a weekly position report. The position report must include, but need not be limited to, total stocks by commodities received or loaded out, forwarding of commodities to terminal storage, conversions of whole commodities to feed, negotiable warehouse receipt obligations, open storage obligations, credit sale contracts, and public-warehouse-owned commodities.

(4) A scale ticket shall be issued for each receipt of commodities. A copy of the scale ticket shall be given to the owner. A commodity handler or small-volume commodity handler shall file the commodity handler's or small-volume commodity handler's copy with all other such copies in numerical sequence and shall file and retain voided scale tickets at the commodity handler's or small-volume commodity handler's place of business. Scale tickets shall be issued in numerical sequence. An issued scale ticket must contain the following: Sequential number; date; owner's name; commodity handler's or small-volume commodity handler's name; commodity; test weight with dockage, if applicable; grade, if assigned; gross weight; tare weight; and net weights, in the case of weights from hopper scales.

(5) A settlement sheet shall be maintained for each owner and shall contain the following: Owner's name; scale ticket numbers; total receipts; total withdrawals; test weight; and grade, if assigned. A copy of a current settlement sheet shall be provided to the owner upon request.

§ 35-36-212. Warehouse operator's liability for disposal of tainted commodities

(1) A warehouse operator is liable for any loss or deterioration of commodities in a public warehouse caused by the warehouse operator's failure to exercise reasonable care of the commodities.

(2) If a warehouse operator discovers that, as a result of a condition of a commodity placed in the warehouse operator's public warehouse of which the warehouse operator had no notice at the time of deposit, the commodity is a hazard to other commodities or to persons or to the public warehouse and if the commodity is not immediately removed by the owner upon the warehouse operator's request, the warehouse operator may sell the commodity after reasonable notice to all persons known to claim an interest in the commodity. If the warehouse operator is unable to sell the commodity after a reasonable effort, the warehouse operator may dispose of it in any other lawful manner, and shall incur no liability to the owner for the disposition.



(3) At any time before the sale or disposition authorized in this section, the warehouse operator shall deliver the commodity to any person entitled to it upon proper demand and payment of all charges incurred for the specific lot of that commodity.

(4) The commissioner may reject as unsuitable for storage any area of the warehouse operator's premises, unless that area is used for storing the warehouse operator's own commodities.

§ 35-36-213. Enforcement – inspection of commodity handler's property – confidentiality

(1) The department has the power to inspect commodity handlers' places of business. The department shall investigate any complaint concerning the operation of any commodity handler or any person attempting or offering to act as a commodity handler, subject to this part 2.

(2) Complaints of record made to the commissioner and the results of the commissioner's 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.

(3) The commissioner, upon consent of the licensee or upon obtaining an administrative search warrant, has the right to inspect any commodity handler's place of business where commodities are stored, handled, or received and any records pertaining to storage obligations and commodity positions kept by the commodity handler that pertain to the operation of the place of business. The property, books, records, accounts, and papers pertaining to storage obligations and commodity positions of every commodity handler are subject to inspection and copying by the commissioner.

(4) The commissioner has 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 a witness to obey a 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 such an order of the court is punishable as a contempt of court.

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

(6) The commissioner is not required to investigate or act upon complaints regarding transactions that occurred more than one hundred



twenty days before the date upon which the commissioner received the written complaint.

(7) If the investigation is against a licensee, the commissioner shall proceed to ascertain the names and addresses of all producers, dealers, or owners of commodities, together with the accounts unaccounted for or due and owing to them by the licensee, and shall request the producers, dealers, or owners to file verified statements of their respective claims with the commissioner. If a producer, dealer, or owner 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 is relieved of any further duty or action under this part 2 on behalf of the producer, dealer, or owner.

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

(9)

(a) If the commissioner determines, after concluding an investigation on any complaint, that reasonable grounds exist to believe that a licensee has violated this part 2, the commissioner shall notify the licensee that the complaint is valid and shall inform the licensee of the licensee's 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 35-36-205, 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 any convenient place designated by the commissioner.

(c) The commissioner shall conduct the hearing pursuant to section 24-4-105. Thereafter, the commissioner shall enter a decision specifying the relevant facts established at the hearing. If the commissioner determines from the facts specified that the licensee has not violated this part 2 or section 35-36-104, the commissioner shall dismiss the complaint. If the commissioner determines from the facts specified that the licensee has violated this part 2 or section 35-36-104, 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 shall enter an order directing the offender to pay the amount to the person complaining 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.



(10) 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 35-36-217 or that the licensee has violated this part 2 or section 35-36-104.

(11)

(a) If a person against whom an order, as specified in subsection (9)(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 issue a further order to that person directing the person to show cause why the person's 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, 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 section 24-4-105 and thereafter shall enter 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 limits the power of the commissioner to revoke or suspend a license when the commissioner is satisfied that one or more of the acts specified in section 35-36-217 was committed.

(12) 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 (7) of this section, the commissioner, after exercising due diligence and making a reasonable inquiry to secure the information from all reasonable and available sources, is not 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 (7) 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, or owner.



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

(a) On the date that possession of commodities is transferred by a claimant; or

(b) In the case of 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.

(14) A commodity handler or small-volume commodity handler shall maintain a public warehouse in a manner adequate to provide a convenient and safe means of ingress and egress to the various storage bins and compartments by those persons authorized to make inspections.

(15)

(a) Each warehouse shall be kept open for the purpose of receiving commodities for storage and delivering commodities out of storage every business day for a period of not less than six hours between the hours of 8 a.m. and 6 p.m., except as provided in subsection (15)(b) of this section. The commodity handler or small-volume commodity handler shall post conspicuously on the door of the public entrance to the commodity handler's or small-volume commodity handler's office and to the commodity handler's or small-volume commodity handler's warehouse a notice showing the hours during which the warehouse will be kept open; except that the notice is not necessary when a warehouse is kept open continuously from 8 a.m. to 6 p.m.

(b) Whenever a warehouse is not to be kept open as required by subsection (15)(a) of this section, the notice posted as prescribed in subsection (15)(a) of this section must state the period during which the warehouse is to be closed and the name, address, and telephone number, if any, of the person who is authorized to deliver commodities stored in the warehouse upon lawful demand by the depositor of the commodity or the holder of the receipt of the commodity, as the case may be.

§ 35-36-214. Procedure on shortage – refusal to submit to inspection

(1) Whenever it appears probable after investigation that a licensed warehouse operator does not possess sufficient commodities to cover the outstanding negotiable warehouse receipts, scale tickets, or other evidence of storage liability issued or assumed by the warehouse operator, the department may give notice to the warehouse operator that the warehouse operator is required to do all or any of the following:

(a) Cover the shortage;

(b) Give an additional bond or irrevocable letter of credit;

(c) Submit to such inspection as the department may deem necessary.



(2) If the warehouse operator fails to comply with the terms of the notice within twenty-four hours after the date of its issuance or within such further time as the department may allow, the department may do all or any of the following:

(a) Issue a cease-and-desist order pursuant to section 35-36-104;

(b) Take possession of all commodities in the public warehouse owned, operated, or controlled by the warehouse operator and of all books, papers, records, and property of all kinds used in connection with the conduct or operation of the warehouse operator's public warehouse business, whether the books, papers, records, and property pertain specifically, exclusively, directly, or indirectly to that business or are related to the warehouse operator's handling, storage, or use of commodities in any other business;

(c) Apply to any court of competent jurisdiction for an order to enjoin the warehouse operator from interfering with the department in the discharge of its duties as required by this section;

(d) Petition any court of competent jurisdiction for an order requiring the warehouse operator or any person who has possession of any commodities, books, papers, records, or property of any kind used in connection with the conduct or operation of the public warehouse business who has refused to surrender possession to the department to surrender possession of the same to the department.

(3) Upon its taking possession of the commodities, the department may give written notice of its action to the holders of all negotiable warehouse receipts or other evidence of deposits issued for commodities to present their negotiable warehouse receipts or other evidence of deposits for inspection or to account for the same. Thereupon, the department shall cause an audit to be made of the affairs of the public warehouse with respect to any commodity in which there is an apparent shortage, determine the amount of the shortage, and compute the shortage as to each owner of the commodity. The department shall attempt to notify the warehouse operator of the amount of the shortage and attempt to notify each owner affected by the shortage. If the owner cannot be notified after a reasonable attempt by the department, the department is not liable for any losses incurred by the owner.

(4) The department shall retain possession of the commodity in the public warehouse and of the books, papers, records, and property of the warehouse operator until such time as the warehouse operator or the warehouse operator's bond or irrevocable letter of credit has satisfied the claims of all holders of negotiable warehouse receipts or other evidence of deposits. In case the shortage exceeds the amount of the bond or irrevocable letter of credit, the warehouse operator's bond or irrevocable letter of credit satisfies the claims pro rata. Nothing in this section prevents the department from complying with an order of a court of competent jurisdiction to surrender possession.



(5) If, during or after the audit provided for in this section or at any other time, the department is of the opinion that the warehouse operator is insolvent or in danger of becoming insolvent or is unable to satisfy the claims of all holders of negotiable warehouse receipts or other evidence of deposits, the department may petition a court of competent jurisdiction in the county for the appointment of a receiver to operate or liquidate the business of the warehouse operator in accordance with applicable law.

(6) At any time within ten days after the department takes possession of any commodities or the books, papers, records, and property of any public warehouse, the warehouse operator may apply to a court of competent jurisdiction for an order requiring the department to show cause why the commodities, books, papers, records, and property should not be restored to the warehouse operator's possession. Upon its being served notice, the department has up to ten days to respond.

(7)

(a) If a court of competent jurisdiction determines that all or any part of the commodities, books, papers, records, and property should not be restored to the possession of the warehouse operator, the court may:

(I) Appoint a receiver for all or any part of the commodities, books, papers, records, and property; or

(II) Determine the disposition of the commodities, books, papers, records, and property that were in the public warehouse and seized pursuant to this part 2.

(b) Pending determination of the ownership of the commodities, any money received from the disposition of the commodities shall be placed in an interest-bearing escrow account.

(8) If the warehouse operator does not apply to a court of competent jurisdiction for a show-cause order under subsection (6) of this section, the department's action is presumed valid, and the commissioner may determine the disposition of the commodities, books, papers, records, and property that were in the public warehouse and seized pursuant to this part 2. Pending determination of the ownership of the commodities, any money received from the disposition of the commodities shall be placed in an interest-bearing escrow account.

(9) All expenses incurred by the department in carrying out this section are a first charge and lien upon the assets of the warehouse operator; and the department may bring a separate civil action through representation by the attorney general in a court in the county in which the public warehouse is located to recover the expenses, or they may be recovered at the same time and as a part of an action filed under subsection (5) of this section.

(10) As a part of the expenses incurred by the department in carrying out this section, the department or the receiver is authorized to include the



cost of adequate liability insurance necessary to protect the department, its officers, and others engaged in carrying out this section.

§ 35-36-215. Inspection fees

(1) The commission, after conferring with interested industry groups, is authorized to fix, assess, and collect fees for the inspection of commodity handlers or small-volume commodity handlers.

(2) For each fiscal year, commencing on July 1, twenty-five percent of the direct and indirect costs of administering and enforcing this part 2 shall be funded from the general fund. The commission shall establish a fee schedule to cover any direct and indirect costs not funded from the general fund. The inspection fee shall be paid by the person, firm, corporation, or other organization requesting the service at the time it is rendered or as otherwise provided and authorized by the commission.

(3) All money collected pursuant to this section shall be transmitted to the state treasurer, who shall credit it to the inspection and consumer services cash fund created in section 35-1-106.5.

§ 35-36-216. Bonds or irrevocable letters of credit – exemptions

(1)

(a) Before any license is issued to a commodity handler, 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 ten thousand dollars nor more than one million dollars, at the discretion of the commissioner.

(b) The bond or irrevocable letter of credit must be conditioned upon compliance with this part 2 and section 35-36-104 and upon the faithful and honest handling of commodities in accordance with this part 2 and section 35-36-104 and must cover any inspection fees due the department by the commodity handler 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 in favor of every producer or owner and, in the instance of a bond, must remain in full force and effect until canceled by the surety upon thirty days' prior written notice to the commissioner.

(c)

(I) A producer or owner within the state of Colorado claiming to be injured by the fraud, deceit, or willful negligence of, or failure to comply with this part 2 and section 35-36-104 by, a commodity handler may request the department, 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 part 2 and section 35-36-104.

(II) The surety on the bond or the issuer of the letter of credit is not liable to pay any claim pursuant to an action brought under this part 2 if the action is not commenced within five hundred forty-eight days, which is approximately eighteen months, after the date of the transaction, as that term is described in section 35-36-213(13), on which the claim is based, or the date of the loss, whichever is later.

(d) When an action is commenced on the bond or irrevocable letter of credit, the commissioner may require the filing of a new bond or irrevocable letter of credit, and the commodity handler's failure to file the new bond or irrevocable letter of credit within ten days after the commencement of the action constitutes grounds for the suspension or revocation of the commodity handler's license.

(e) A person licensed pursuant to part 3 of this article 36 may apply for a license as a commodity handler and is not subject to the license fee required by section 35-36-203. The bond or irrevocable letter of credit required by section 35-36-304 applies to the person's activities as a commodity handler and is subject to this section and section 35-36-213.

(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 that a commodity handler provide an additional bond or irrevocable letter of credit or other evidence of financial responsibility to conform to the requirements of this part 2 and section 35-36-104 or any rule promulgated pursuant to this article 36 regarding commodity handlers. The commodity handler's failure to comply with the commissioner's requirement within thirty days after written demand for compliance constitutes grounds for the suspension or revocation of the commodity handler's license.

(3) This section does not apply to small-volume commodity handlers.

§ 35-36-217. Unlawful acts – definition

(1) It is unlawful and a violation of this part 2 for a 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 commodities. Violation of this subsection (1)(a) is a class 6 felony.

(b) Willfully fail or refuse to render a true account of sales or storage or to make a settlement on sales or storage or to pay for commodities received on the date and in the manner



specified in the contract with the owner or, if no date is specified in the contract or on delivery, within thirty days after the date of delivery or the date on which the person took possession of the commodities. Violation of this subsection (1)(b) is a class 6 felony.

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

(e) Act as a commodity handler without having obtained a license or act as a commodity handler without having filed a surety bond or irrevocable letter of credit, as provided in this part 2. Violation of this subsection (1)(e) is a class 6 felony.

(f) Willfully convert to the person's own use or benefit the commodities of another. Violation of this subsection (1)(f) is 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) is a class 2 misdemeanor.

(h) Fail to comply with any lawful order of the commissioner concerning the administration of this part 2. Violation of this subsection (1)(h) is a class 2 misdemeanor.

(i) Interfere with or hinder an authorized representative of the department while performing the person's duties under this part 2. Violation of this subsection (1)(i) is a class 2 misdemeanor.

(j) Willfully alter or destroy any negotiable warehouse receipt or the record of the negotiable warehouse receipt; issue a negotiable warehouse receipt without preserving a record of the negotiable warehouse receipt; issue a negotiable warehouse receipt when the commodity described is not in the building certified in the receipt; with intent to defraud, issue a second or other negotiable warehouse receipt for any commodity for which, or for any part of which, a valid negotiable warehouse receipt is already outstanding and in force; or, while a valid negotiable warehouse receipt is outstanding and in force, sell, pledge, mortgage, encumber, or transfer a commodity in violation of this part 2 or section 35-36-104 or permit the same to be done without the written consent of the holder of the negotiable warehouse receipt or receive the property or help to dispose of the property. Violation of this subsection (1)(j) is a class 6 felony.



(k) Sell commodities for less than the current market price to a person with whom the person 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 commodities out of the purchase price of which the commodity handler or small-volume commodity handler, directly or indirectly, retains any portion of the purchase price other than the commission allowed and reported pursuant to section 35-36-310. Violation of this subsection (1)(k) constitutes theft, as defined in section 18-4-401.

(l) Act as a commodity handler or small-volume commodity handler and, with intent to defraud, make, draw, utter, or deliver any check, draft, or order for the payment of money upon a bank or other depository to the owner for the purchase price of any commodities or any part of the purchase price upon obtaining possession or control of the commodities, when, at the time of the making, drawing, uttering, or delivery, the maker or drawer has insufficient 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 is prima facie evidence of an intent to defraud. "Credit", as used in this subsection (1)(l), means an arrangement or understanding with the bank or depository for the payment of the check, draft, or order. Violation of this subsection (1)(l) is fraud by check, as defined in section 18-5-205.

§ 35-36-301. 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.

§ 35-36-302. Application for license – rules

(1) A person shall not act as a dealer, small-volume dealer, or agent without having obtained a license as provided in this part 3. 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 must be accompanied by the license fee provided for in section 35-36-303 for each specified class of business.

(2) The application in each case must 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 must 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 the



applicant's 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 comply with 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 must include such information as the commissioner may consider proper or necessary, and the application must 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 the agent and the written endorsement or nomination of the dealer or small-volume dealer. A person shall not be licensed as an agent unless all of the agent's principals are licensed under this part 3.

(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 by the application, 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 expires 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. A 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 of the license in the person's office or salesroom in plain view of the public.

(5) The commissioner shall revoke any license granted as a result of fraud or misrepresentation in applying for the license. All indicia of the possession of a license are at all times the property of the state of Colorado, and each licensee is entitled to the possession of a license only for the duration of the license.

(6) Any person licensed under part 2 of this article 36 may apply for a license as a dealer or small-volume dealer without paying the license fee otherwise required by section 35-36-303.

§ 35-36-303. License fee – renewal – rules

(1)

(a) For filing the application described in section 35-36-302, each applicant for a license in each of the following categories shall pay to the commissioner a fee as determined by the 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 will make payment in cash or by one of the other means specified in section



35-36-304(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 part 3 must be funded from the general fund. The commission shall establish a fee schedule to cover any direct and indirect costs not funded from the general fund.

(2) If a 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 commission, which penalty is in addition to the license fee.

(3) The commissioner shall not issue a license to 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 this part 3 during the period of three years after the date of the collection; except that the commissioner may, in the commissioner's discretion and consistent with the purpose of this part 3, issue a temporary license to the person for the period, subject to such restrictions as the commissioner deems reasonable and necessary.

(4) The commissioner shall not issue a renewal license to a licensee who is the subject of a pending verified complaint 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 after the date of application, the application will be rendered void, and the license fee will not be refunded. Any subsequent application for a license requires a new license fee.

(6) Whenever the commissioner deems it appropriate, the commissioner may require a licensee or an applicant for an initial or renewal license to submit a financial statement or an audit prepared according to generally accepted accounting principles or any other information to determine whether the person is in an adequate financial position to carry out the person's duties as a licensee.

§ 35-36-304. Bonds and irrevocable letters of credit – exemptions

(1)

(a) Before the commissioner may issue a license to a dealer, the applicant shall file with the commissioner in the sum of not less than two thousand dollars nor more than one million dollars, at the discretion of the commissioner:



(I) 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

(II) An irrevocable letter of credit meeting the requirements of section 11-35-101.5.

(b) The bond or irrevocable letter of credit must be conditioned upon compliance with this part 3 and section 35-36-104 and upon the faithful and honest handling of farm products in accordance with this part 3 and shall cover any fees due the department 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 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 canceled by the surety upon thirty days' prior written notice to the commissioner.

(c)

(I) A 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 part 3 or section 35-36-104 by, a dealer may request the department, 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.

(II) The surety on the bond or the issuer of the letter of credit is not liable to pay a claim pursuant to an action brought under this part 3 if the action is not commenced within five hundred forty-eight days, which is approximately eighteen months, after the date of the transaction, as that term is described in section 35-36-305(12), on which the claim is based, or the date of the loss, as that term is defined in section 35-36-102(20), whichever is later.

(d) When an action is commenced on the bond or irrevocable letter of credit, the commissioner may require the licensee to file 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 the action constitutes grounds for the suspension or revocation of the licensee's license.

(e) The commissioner shall not require a bond or irrevocable letter of credit from 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 of the farm products 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 the applicant's or licensee's obligations; except that the bond must include all obligations pertaining to Colorado farm products, and the dealer shall furnish documentary evidence 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 35-36-216 must apply to the activities as a dealer of a person licensed pursuant to part 2 of this article 36. The persons are also subject to this section and section 35-36-305.

(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 a dealer to furnish an additional bond or irrevocable letter of credit or other evidence of financial responsibility to conform to the requirements of this part 3 or any rule promulgated pursuant to this article 36. The failure of the dealer to comply with the commissioner's requirement within thirty days after written demand for compliance constitutes grounds for the suspension or revocation of the dealer's license.

§ 35-36-305. Investigations, hearings, and examinations

(1) For the purpose of enforcing this part 3, the commissioner may receive complaints from persons against a dealer, small-volume dealer, agent, or person assuming or attempting to act as a dealer, small-volume dealer, or agent and, upon the receipt of a complaint, may make any and all necessary investigations relative to the complaint.

(2) The commissioner upon the commissioner's own motion may, and upon the verified complaint of any person shall, investigate any transactions involving this part 3.

(3)

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

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

(c) The commissioner has 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 a witness to obey a 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 is 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 a licensee relating to whatever transactions may be involved.

(5) The commissioner need not investigate or act upon complaints regarding transactions that occurred more than one hundred twenty days before 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, after the commissioner makes the request for verified statements, a producer, dealer, small-volume dealer, or owner 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 is relieved of any further duty or action under this part 3 on behalf of the producer, dealer, small-volume dealer, or owner.

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

(8)

(a) If the commissioner determines, after concluding an investigation on a complaint, that reasonable grounds exist to believe that a licensee has violated this part 3 or section 35-36-104, the commissioner shall notify the licensee that the complaint is valid and inform the licensee of the licensee's 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 a licensee is necessary, the commissioner shall cause a copy of the complaint or the grounds specified in section 35-36-306, 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 section 24-4-105. Thereafter, the commissioner



shall enter in the commissioner's 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 this part 3 or section 35-36-104, the commissioner shall dismiss the complaint. If the commissioner determines from the facts specified that the licensee has violated this part 3 or section 35-36-104, 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 of damages on or before the date fixed in the order. The commissioner shall cause to be furnished a copy of the decision to all the respective parties to the complaint.

(9) As a result of the hearing, the commissioner may also enter an 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 35-36-313 or that the licensee has violated this part 3 or section 35-36-104.

(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 issue a further order to that person directing the person to show cause why the person's license should not be suspended or revoked for failure to comply with the order.

(b) If the commissioner issues an order to show cause pursuant to subsection (10)(a) of this section, a copy of the order to show cause, together with a notice of the time and place of the hearing on the order to show cause, 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 section 24-4-105 and thereafter shall enter in the commissioner's office an order and decision specifying the facts established at the hearing and dismissing the order to show cause, directing the suspension or revocation of the license held by the licensee, or making such other conditional or probationary orders as may be proper. The commissioner shall cause a copy of the order and decision to be furnished to the licensee.

(d) Nothing in this section limits the power of the commissioner to revoke or suspend a license when satisfied of the existence of any of the facts specified in section 35-36-313.



(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 the information from all reasonable and available sources, is not 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; or
- (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) The commissioner has discretion to close from public inspection complaints of record made to the commissioner and the results of the commissioner's investigations 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.

§ 35-36-306. Disciplinary powers – licenses

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

- (a) Violated this part 3 or section 35-36-104 or violated any of the rules promulgated by the commissioner pursuant to this article 36;
- (b) Been convicted of a felony under the laws of this state, any other state, or the United States; except that, in considering a conviction of a felony, the commissioner is governed by 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 35-36-304;



- (e) Been determined by the commissioner to be in an inadequate financial position to meet liability obligations;
 - (f) Failed to comply with a lawful order of the commissioner concerning the administration of this part 3; or
 - (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 section 35-36-305 and article 4 of title 24.
- (3) A previous violation of this part 3 or section 35-36-104 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 this part 3 or section 35-36-104 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.

§ 35-36-307. 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 of the dealer or small-volume dealer;
 - (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) A dealer or small-volume dealer shall retain records of a dealer or small-volume dealer for a period of two years after the date of completion of the credit sale contracts, and the records must reflect those credit sale contracts that have been paid, canceled, or amended



and those that are still open. The dealer or small-volume dealer shall keep the records at the dealer's or small-volume dealer's place of business at all times.

(3) The commissioner shall require an annual report of the status of all of a dealer's or small-volume dealer's credit sale contracts along with the financial statement required under section 35-36-204(1)(b).

(4) A dealer or small-volume dealer shall consecutively number all credit sale contracts entered into by the dealer or small-volume dealer and make copies of the credit sale contracts available for inspection by the commissioner or the commissioner's authorized agents.

(5) A dealer or small-volume dealer issuing credit sale contracts shall maintain positive working capital and a current ratio equal to or greater than one-to-one and reserves in an amount equaling or exceeding one hundred percent of the value of all of that dealer's or small-volume dealer's open credit sale contracts, which value shall be determined with reference to the daily bid price. The reserves may be in the form of any one or a combination of the following:

- (a) Cash;
- (b) Farm product assets, including farm products or other evidence of storage of farm products;
- (c) Credit sale contracts with other dealers or small-volume dealers licensed by the department; or
- (d) An irrevocable letter of credit in favor of the commissioner, which letter of credit is subject to section 35-36-216.

§ 35-36-308. Records of dealers

(1) Every dealer handling farm products for a 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 a financial interest in the business of the purchasers or if the purchasers have a 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 must appear on all sales tags or other essential records needed to show what the product actually sold for; and

(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. The dealer shall make the records available for inspection by the commissioner and the consignor for whom the claims are made.

§ 35-36-309. 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.

§ 35-36-310. Daily reports and settlements

(1) When requested by a dealer's consignor, the 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. The dealer shall make remittance in full to the consignor 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 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 35-36-308.

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

(3) Every dealer shall pay for farm products delivered to the dealer 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.

§ 35-36-311. Pooled Consignment

Local produce or fruit associations or other shippers located in the neighborhood where farm products are grown may receive a reasonable compensation for loading, shipping, and securing persons to handle the products 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.

§ 35-36-312. Enforcement

Whenever, upon sufficient evidence satisfactory to the commissioner, the commissioner determines a person has engaged in or is about to engage in an act or practice constituting a violation of this part 3 or of any rule or order promulgated under this article 36, 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 part 3 or any rule or order pursuant to this article 36. In the action, the commissioner need not 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.

§ 35-36-313. Unlawful acts – definition

(1) It is unlawful and a violation of this part 3 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 farm products. Violation of this subsection (1)(a) is a class 6 felony.

(b) Willfully fail or refuse to render a true account of sales or storage or to make a settlement on sales or storage or to pay for farm products received within the time and in the manner required by this part 3. Violation of this subsection (1)(b) is 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) is 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) is 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 part 3. Violation of this subsection (1)(e) is a class 6 felony.

(f) Willfully convert to the person's own use or benefit the farm products of another. Violation of this subsection (1)(f) is 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) is a class 2 misdemeanor.

(h) Fail to comply with a lawful order of the commissioner concerning the administration of this part 3. Violation of this subsection (1)(h) is a class 2 misdemeanor.

(i) Interfere with or hinder an authorized representative of the commissioner while performing the authorized representative's duties under this part 3. Violation of this subsection (1)(i) is a class 2 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 a 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 the dealer or small-volume dealer receives, directly or indirectly, a portion of the purchase price other than the commission allowed in section 35-36-310. Violation of this subsection (1)(j) is 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 a 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 of the farm products upon obtaining possession or control of the farm products, when at the time of the making, drawing, uttering, or delivery the maker or drawer has insufficient 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 is 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) is 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 35-36-303(1)(a)(I), fail to make payment in cash or by one of the other means specified in section 35-36-304(1)(c) for any transaction without first complying with the bonding requirements of section 35-36-304. Violation of this subsection (1)(l) is a class 2 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. Violation of this subsection (1)(m) is a class 2 misdemeanor.

§ 35-36-314. Penalties for theft of farm products



(1) If farm products are contracted for sale to an out-of-state purchaser, the purchaser is subject to the jurisdiction of the courts of this state in accordance with section 13-1-124(1)(a). The seller is 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 the products and the products have been physically removed to another state. The court shall give the action priority on the court's docket.

(2) If a 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 the products, the person commits theft of farm products and shall be punished as provided in section 18-4-401(2).

