



The National Agricultural Law Center

The nation's leading source for agricultural & food law research & information

NationalAgLawCenter.org | nataglaw@uark.edu

Requirements for Grain Warehouses:

Colorado



This material is based upon work supported by the National Agricultural Library,
Agricultural Research Service, U.S. Department of Agriculture

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

Fast find:

- 1) Licensing: [§§ 35-36-103; 105 to 107](#)
- 2) Bonding: [§§ 35-36-117; 119; 123\(1\)\(e\)](#)
- 3) Auditing: [§§ 35-36-114; 116 to 118](#)
- 4) Indemnity Fund:
- 5) Failure/Liquidation: [§ 35-36-117](#)
- 6) Prompt Payment:
- 7) Penalties: [§§ 35-36-107; 116; 120 to 121; 124](#)
- 8) Lien:

35 CO ST Ch. 36

Current through 2019 Legislative Session

35-36-102. Definitions – rules

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

- (1) "Bailee" means a person who, by a negotiable warehouse receipt or other document of title, acknowledges possession of goods and contracts to deliver them.
- (2) "Bailment" means the act of delivering goods or personal property to another in trust.
- (3) "Commercial feeding" means the feeding of livestock by a person who receives compensation from the owner of the livestock for the feeding.
- (4) "Commissioner" means the commissioner of agriculture or his or her designee.
- (5) "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 may be determined by the commissioner.
- (6) (a) "Commodity handler" means:
 - (I) Any person engaged in buying any commodities from the owner for processing or resale;
 - (II) Any person engaged in receiving and taking possession of any commodities from the owner for storage or safekeeping;
 - (III) Any person engaged in soliciting or negotiating sales of commodities between the vendor and purchaser respectively;
 - (IV) Any person who receives on consignment or solicits from the owner thereof any kind of commodity for sale on commission on behalf of the owner, or who accepts any commodity in trust from the owner thereof 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 thereof; or

(V) Any person engaged in buying any commodity from the owner thereof for the commercial feeding of livestock that are owned wholly or in part by another, at an animal feeding operation with a capacity of more than two thousand five hundred head of livestock. The commissioner shall establish rules to determine the capacity of animal feeding operations for purposes of this article 36.

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

(7) "Compensation" means something of value or benefit, whether in cash, in kind, or in any other form.

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

(9) "Department" means the department of agriculture.

(10) "Financial statement" means a statement 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.

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

(12) "Functional unit" means one or more warehouses that constitute a single operating unit if:

(a) The same warehouse operator operates each warehouse in conjunction with any other;

(b) All the warehouses are functioning under the same name and with the same personnel, office, books, and records; and

(c) Together the warehouses have the capability to weigh, grade, receive, store, and load out commodities.

(13) "Handling" means buying commodities for resale or processing, brokering commodities, or receiving and loading out commodities tendered for storage.

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

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

(15) "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.

(16) "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.

(17) "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.

(18) "Owner" means any person in whom legal title to any commodity is vested, whether produced by the owner or acquired by purchase.

(19) "Person" includes any individual, firm, association, partnership, or corporation or the commissioner.

(20) "Processing" means the operation of canning, fermenting, distilling, extracting, preserving, grinding, crushing, flaking, mixing, or otherwise changing the form of a commodity for the purpose of selling any of the resulting products.

(21) "Producer" means any grower of commodities.

(22) "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.

(23) "Public warehouse" includes any elevator, mill, warehouse, or other structure in which commodities are received from one or more members of the public for storage.

(24) "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.

(25) "Settlement sheet" means a summary of the commodity handler's transactions with an owner.

(26) "Storage" means the holding of a commodity for another by a person who does not directly own the commodity. "Storage" does not include transportation of a commodity.

(27) "Terminal warehouse" means any public warehouse licensed by the Colorado department of agriculture, 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.

(28) "Warehouse operator" includes any person or existing legal entity owning, operating, or controlling any public warehouse.

35-36-103. Licenses - commodity handler – rules

(1) No person shall act as a commodity handler in this state without having first obtained a license from the department.

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

35-36-104. Exemptions

(1) The provisions of this article 36 that apply to warehouse operators do not apply to the owner or operator of any 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 provisions of the "United States Warehouse Act", 7 U.S.C. sec. 241 et seq.;

(b) Receives only commodities that the owner or operator has purchased, or that he or she is processing or cleaning for the owners of the commodities, or that he or she 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.

35-36-105. Commodity handler licenses - application requirements – fee

(1) (a) Each 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 agricultural commission, which license fee the department shall collect and transmit to the state treasurer, who shall credit the same 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 agricultural 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 shall 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. The application shall also state 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 shall further satisfy the commissioner of its character, responsibility, and good faith in seeking to carry on the business stated in the application. In determining a person's character, the commissioner shall be governed by the provisions of section 24-5-101.

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

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

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

(e) Any other information that the commissioner deems reasonably necessary to carry out the purposes of this article 36.

(3) Fraud or misrepresentation in making any application shall in and of itself work a revocation of any license granted pursuant to the application. All indicia of the possession of a license shall at all times be the property of the state of Colorado, and each licensee is entitled to the possession of the indicia only while said license remains valid and current.

35-36-106. Licenses - requirements – rules

(1) To receive or maintain a license, each applicant or licensee shall satisfy the following requirements:

(a) 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.

(b) The applicant or licensee shall furnish the commissioner with a financial statement that presents accurately his or her 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 the provisions of this article 36 shall be confidential. Whenever the commissioner deems it appropriate, he or she may require any applicant for an initial license, any applicant for a renewal of a license, or any 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 his or her duties as a licensee.

(2) If any 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 fee as established by the agricultural commission. The penalty fee shall be in addition to the license fee.

35-36-107. Disciplinary powers – licenses

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

(a) Violated any of the provisions of this article 36 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 article 36;

(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 shall be governed by the provisions of section 24-5-101;

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

(e) Failed or refused to execute and deliver to the commissioner a surety bond as required by section 35-36-119;

(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 article 36;

(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 the provisions of article 4 of title 24.

(3) Any previous violation of the provisions of this article 36 by the applicant or any person connected with the applicant in the business for which the applicant seeks to be licensed or, in the case of a partnership or corporation applicant, any previous violations of the provisions of this article 36 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.

35-36-108. Bailment of commodities

(1) Acceptance of commodities for storage by a warehouse operator shall constitute a bailment and not a sale. Stored commodities shall not be liable 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 thereof; 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.

35-36-109. Credit sale contracts – rules

(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 commodity handler's records shall be retained for a period of two years and shall reflect those credit sale contracts that have been cancelled and those that are still open. The records shall be kept at the commodity handler's place of business at all times.

(3) An annual report of the status of the credit sale contracts may be required by the commissioner along with the financial statement required in section 35-36-106.

(4) All credit sale contracts entered into by a commodity handler shall be consecutively numbered by the commodity handler, and copies thereof shall be made available by the commodity handler for inspection and examination by the commissioner or his or her 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 fifty 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 evidences of storage of commodities;

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

(d) An irrevocable letter of credit in favor of the commissioner, which letter of credit shall be subject to the provisions of section 35-36-119; or

(e) Net worth of the commodity handler of at least four times the value of the open credit sale contracts.

35-36-110. 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.

35-36-111. Commissioner - rules - delegation of powers and duties

(1) The commissioner may promulgate such rules in accordance with article 4 of title 24 as are necessary for the administration of this article 36.

(2) The commissioner shall be the enforcing authority of this article 36, and the commissioner or the commissioner's authorized representative shall have free and unimpeded access to all places of business and all business records of the licensee pertinent to any proper inquiry in the administration of this article 36. Any person in whom the enforcement of any provision of this article 36 is vested has the power of a peace officer as to the enforcement.

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

35-36-112. Negotiable warehouse receipts – rules

(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.

35-36-113. 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. The 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 article 36 shall be construed to prevent the issuance of nonnegotiable scale tickets or other nonnegotiable evidences 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 thereof on the depositor's nonnegotiable warehouse receipt or on such other records as may be prescribed by the department. If the warehouse operator has theretofore 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 receiving commodities for storage or handling shall immediately, upon receipt of each load, issue to every person delivering the commodity a scale ticket, which shall 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 shall constitute 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 shall be liable, to a good faith purchaser for value, for his or her failure to deliver to the purchaser all the commodities specified in the receipt. This liability shall apply 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.

35-36-114. Commodity handler records - separate and distinct - time of maintenance

(1) A 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 shall be entered in the books of the commodity handler in the same manner as those of other depositors. For the purpose of this section, "other business" shall mean 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 shall maintain adequate records and systems for the filing and accounting of negotiable warehouse receipts, cancelled negotiable warehouse receipts, scale tickets, and other documents and transactions necessary or common to the commodity handling industry. Cancelled negotiable warehouse receipts, copies of scale tickets, and copies of other documents evidencing ownership or ownership liability shall be retained by the commodity handler for a period of at least three years after the date of cancellation.

(3) A position report shall be posted daily by the commodity handler; however, if a daily position report poses a substantial hardship, the commissioner may authorize, in writing, a weekly position report. The position report shall include, but need not be limited to, total stocks by commodities received or loaded out, forwardings 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. The commodity handler's copy shall be filed with all other such copies in numerical sequence. Voided scale tickets shall be filed and retained at the commodity handler's place of business. Scale tickets shall be issued in numerical sequence. An issued scale ticket shall contain the following: Sequential number; date; owner's name; 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 the owner upon request.

35-36-115. Warehouse operator's liability for disposal of tainted commodities

(1) A warehouse operator shall be 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 he or she 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.

35-36-116. Enforcement - inspection of commodity handlers' 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 such, subject to the provisions of this article 36.

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

(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 thereof. The property, books, records, accounts, and papers pertaining to storage obligations and commodity positions of every commodity handler shall be subject to inspection and copying by the commissioner.

(4) The commissioner shall have full authority to administer oaths and take statements, to issue subpoenas requiring the attendance of witnesses and the production of all books, memoranda, papers, and other documents, articles, or instruments, and to compel the disclosure by the witnesses of all facts known to them relative to the matters under investigation. Upon the failure or refusal of any witness to obey any subpoena, the commissioner may petition the district court, and, upon a proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey such an order of the court shall be 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 shall not be required to investigate or act upon complaints regarding transactions that occurred more than one hundred twenty days prior to the date upon which the commissioner received the written complaint.
- (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 said 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 so requested fails, refuses, or neglects to file a verified statement in the office of the commissioner within thirty days after the date of the request, the commissioner shall thereupon be relieved of any further duty or action under this article 36 on behalf of said 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 any of the provisions of this article 36, the commissioner shall notify the licensee that the complaint is valid and shall inform the licensee of his or her opportunity to request a hearing, in writing, on the complaint within ten days after the date of the notice.
- (b) Upon the receipt of a request for a hearing from a licensee or if the commissioner determines that a hearing concerning any licensee is necessary, the commissioner shall cause a copy of the complaint or the grounds specified in section 35-36-107, 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 the provisions of 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 any of the provisions of this article 36, the complaint shall be dismissed. If the commissioner determines from the facts specified that the licensee has violated any of the provisions of this article 36, 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 35-36-123 or that the licensee has violated any of the provisions of this article 36.

(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 said order within the time specified in the order, the commissioner may thereupon issue a further order to that person directing the person to show cause why his or her license should not be suspended or revoked for failure to comply with said order.

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

(c) The commissioner shall conduct the hearing pursuant to the provisions of section 24-4-105 and thereafter shall enter 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 said order and decision shall be furnished to the licensee.

(d) Nothing in this section shall be construed as limiting the power of the commissioner to revoke or suspend a license when he or she is satisfied of the existence of any of the facts specified in section 35-36-123.

(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 said information from all reasonable and available sources, shall not be liable or responsible for the claims or the handling of claims that may subsequently appear or be discovered. After ascertaining all claims, assessments, and statements in the manner set forth in subsection (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 said 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 public warehouse shall be maintained by the commodity handler 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 shall post conspicuously on the door of the public

entrance to his or her office and to his or her licensed 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 shall state the period during which the warehouse is to be closed and the name, address, and telephone number, if any, of the person who shall be authorized to deliver commodities stored in the warehouse upon lawful demand by the depositor thereof or the holder of the receipt thereof, as the case may be.

35-36-117. 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 evidences of storage liability issued or assumed by the warehouse operator, the department may give notice to the warehouse operator that he or she 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 35-36-120;
- (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 his or her 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 evidences of deposits issued for commodities to present their negotiable warehouse receipts or other evidences 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 thereby affected. If the owner cannot be notified after a reasonable attempt by the department, the department shall not be held 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 evidences 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 shall satisfy the claims pro rata. Nothing in this section shall be construed to prevent 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 so or is unable to satisfy the claims of all holders of negotiable warehouse receipts or other evidences 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 shall have not more than 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 article 36.

(b) Pending determination of the ownership of the commodities, any funds 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 article 36. Pending determination of the ownership of the commodities, any funds 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 the provisions of this section shall be a first charge and lien upon the assets of the warehouse operator; and the expenses may be

recovered in a separate civil action brought by the department, represented by the attorney general, in a court in the county in which the public warehouse is located, 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 so incurred, 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 the provisions of this section.

35-36-118. Inspection fees

(1) The state agricultural commission, after conferring with interested industry groups, is authorized to fix, assess, and collect fees for the inspection of 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 article 36 shall be funded from the general fund. The agricultural commission shall establish a fee schedule to cover any direct and indirect costs not funded from the general fund. 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 the same to the inspection and consumer services cash fund created in section 35-1-106.5.

35-36-119. Bonds or irrevocable letters of credit – exemptions

(1) (a) Before any license is issued to any 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 article 36 and upon the faithful and honest handling of commodities in accordance with this article 36 and must cover any inspection fees due the department of agriculture 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 of agriculture in favor of every producer or owner and, in the instance of a bond, must remain in full force and effect until cancelled by the surety upon thirty days' prior written notice to the commissioner.

(c)

(I) Any 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 article 36 by, any 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 article 36.

(II) The surety on the bond or the issuer of the letter of credit is not liable to pay any claim pursuant to any action brought under this article 36 if the action is not commenced within one

hundred eighty days after the date of the transaction, as that term is defined in section 35-36-116 (13), on which the claim is based, or the date of the loss, whichever is later.

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

(e) Any person licensed pursuant to article 37 of this title 35 may apply for a license as a commodity handler and shall not be subject to the license fee required by section 35-36-105. The bond or irrevocable letter of credit required by section 35-37-106 shall also apply to the person's activities as a commodity handler and shall be subject to the provisions of this section and section 35-36-116.

(2) Whenever the commissioner determines that a previously approved bond or irrevocable letter of credit is or for any cause has become insufficient, the commissioner may require an additional bond or irrevocable letter of credit or other evidence of financial responsibility to be given by a commodity handler to conform to the requirements of this article 36 or any rule promulgated pursuant to the provisions of this article 36. The commodity handler's failure to comply with the commissioner's requirement within thirty days after written demand therefor constitutes grounds for the suspension or revocation of his or her license.

35-36-120. Cease-and-desist order - restraining order

(1) If the commissioner determines that there exists a violation of any provision 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 any person to cease functioning as a commodity handler, except for those functions necessary to prevent spoilage of products stored in his or her public warehouse. The order shall 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, be ceased forthwith. At any time after the date of the service of the order to cease and desist, the person may request a hearing on the question of whether or not the violation has occurred. The hearing shall be concluded in not more than ten days after the request and shall be conducted pursuant to the provisions of article 4 of title 24.

(2) In the event that any person fails to comply with a cease-and-desist order within twenty-four hours after service, the commissioner may 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 any such action, the commissioner shall not be required to plead or prove irreparable injury or the inadequacy of a remedy at law. Under no circumstances shall the court require the commissioner to post a bond.

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

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

35-36-121. Civil penalties

(1) Any person who violates any provision of 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 shall not exceed one thousand dollars per violation per day.

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

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

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

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

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

35-36-122. 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 the provisions of section 24-4-106 only after all administrative remedies have been exhausted.

35-36-123. Unlawful acts

(1) It is unlawful and a violation of this article 36 for any person to:

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

(b) Willfully fail or refuse to render a true account of sales or storage or to make a settlement thereon or to pay for 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) shall constitute 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) shall constitute a class 6 felony.

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

- (e) Act as a 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 article 36. Violation of this subsection (1)(e) shall constitute a class 6 felony.
- (f) Willfully convert to his or her own use or benefit the commodities of another. Violation of this subsection (1)(f) shall constitute theft, as defined in section 18-4-401.
- (g) Commit fraud or deception in the procurement or attempted procurement of a license. Violation of this subsection (1)(g) shall constitute a class 1 misdemeanor.
- (h) Fail to comply with any lawful order of the commissioner concerning the administration of this article 36. Violation of this subsection (1)(h) shall constitute a class 1 misdemeanor.
- (i) Interfere with or hinder an authorized representative of the department while performing his or her duties under this article 36. Violation of this subsection (1)(i) shall constitute a class 1 misdemeanor.
- (j) Willfully alter or destroy any negotiable warehouse receipt or the record of the negotiable warehouse receipt or issue a negotiable warehouse receipt without preserving a record thereof; or issue a negotiable warehouse receipt when the commodity described is not in the building certified in the receipt; or, 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 any valid negotiable warehouse receipt is outstanding and in force, sell, pledge, mortgage, encumber, or transfer a commodity in violation of the provisions of this article 36 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 same. Violation of this subsection (1)(j) shall constitute a class 6 felony.
- (k) Sell commodities for less than the current market price to any person with whom he or she 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 said handler, directly or indirectly, retains any portion thereof other than the commission allowed and reported pursuant to section 35-37-114. Violation of this subsection (1)(k) shall constitute theft, as defined in section 18-4-401.
- (l) Act as a commodity handler and, with intent to defraud, make, draw, utter, or deliver any check, draft, or order for the payment of money upon any bank or other depository to the owner for the purchase price of any commodities or any part thereof upon obtaining possession or control thereof, when at the time of the making, drawing, uttering, or delivery the maker or drawer has not sufficient funds in or credit with the bank or other depository for the payment of the check, draft, or order in full upon its presentation. The making, drawing, uttering, or delivery of the check, draft, or order shall be prima facie evidence of an intent to defraud. "Credit", as used in this subsection (1)(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) shall constitute fraud by check, as defined in section 18-5-205.

35-36-124. Penalties

- (1) Any person who violates any of the provisions of section 35-36-123 (1)(a), (1)(b), (1)(c), (1)(d), (1)(e), or (1)(j) commits a class 6 felony and shall be punished as provided in section 18-1.3-401. Any person who violates any of the provisions of section 35-36-123 (1)(f) commits

theft, as defined in section 18-4-401. Any person who violates any of the provisions of section 35-36-123 (1)(g), (1)(h), or (1)(i) commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501.

(2) Any person who violates any other provision of this article 36 commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501.

(3) Civil suits and criminal prosecutions arising by virtue of any of the provisions of this article 36 may be commenced and tried either in the county in which the commodities were received by the commodity handler, or in the county in which the principal place of business of the commodity handler 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 any of the provisions of this article 36 occurs shall, upon the request of any enforcing officer or other interested person, prosecute the violation.

35-36-125. Repeal of article

This article 36 is repealed, effective July 1, 2020. Prior to the repeal, the licensing functions of the commissioner shall be reviewed as provided for in section 24-34-104.