

**Second Regular Session
Seventy-second General Assembly
STATE OF COLORADO**

DRAFT

LLS NO. 20-0521.01 Jennifer Berman x3286

HOUSE BILL

HOUSE SPONSORSHIP

Young and Pelton, Catlin, Holtorf, Valdez D., Will

SENATE SPONSORSHIP

(None),

House Committees

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE CONTINUATION OF THE DEPARTMENT OF**
 102 **AGRICULTURE'S REGULATORY FUNCTIONS RELATED TO PERSONS**
 103 **WHO WORK WITH AGRICULTURAL PRODUCTS, AND, IN**
 104 **CONNECTION THEREWITH, IMPLEMENTING RECOMMENDATIONS**
 105 **CONTAINED IN THE 2019 SUNSET REPORT BY THE DEPARTMENT**
 106 **OF REGULATORY AGENCIES CONCERNING THE "COMMODITY**
 107 **HANDLER ACT" AND THE "FARM PRODUCTS ACT".**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
*Capital letters or bold & italic numbers indicate new material to be added to existing statute.
 Dashes through the words indicate deletions from existing statute.*

Sunset Process - House Rural Affairs and Agriculture Committee. The bill implements recommendations of the department of regulatory agencies' sunset review and report on the licensing functions of the commissioner of agriculture (commissioner) regarding the "Commodity Handler Act" and the "Farm Products Act" by:

- Continuing the commissioner's licensing functions for 11 years, until 2031;
- Combining the "Commodity Handler Act" and the "Farm Products Act" in one article;
- Requiring rule-making regarding bond schedules, record keeping, minimal financial requirements, initial and renewal license requirements, credit sale contract requirements, and standard warehouse operation requirements;
- Requiring that financial statements submitted to the commissioner be prepared by a certified public accountant;
- Increasing the maximum bond amount that farm products dealers must file from \$200,000 to \$1 million; and
- For the definition of "small-volume dealer", repealing the limitation that a small-volume dealer cannot purchase \$2,500 or more worth of farm products or commodities in a single transaction.

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

2 **SECTION 1.** In Colorado Revised Statutes, 24-34-104, **repeal**
3 (18)(a)(IV); and **add** (32) as follows:

4 **24-34-104. General assembly review of regulatory agencies**
5 **and functions for repeal, continuation, or reestablishment - legislative**
6 **declaration - repeal.** (18) (a) The following agencies, functions, or both,
7 are scheduled to repeal on July 1, 2020:

8 ~~(IV) The licensing and regulation of persons by the department of~~
9 ~~agriculture in accordance with articles 36 and 37 of title 35;~~

10 (32) (a) THE FOLLOWING AGENCIES, FUNCTIONS, OR BOTH, ARE
11 SCHEDULED FOR REPEAL ON SEPTEMBER 1, 2031:

12 (I) THE LICENSING AND REGULATION OF PERSONS BY THE

1 DEPARTMENT OF AGRICULTURE IN ACCORDANCE WITH ARTICLE 36 OF TITLE
2 35.

3 (b) THIS SUBSECTION (32) IS REPEALED, EFFECTIVE SEPTEMBER 1,
4 2033.

5 **SECTION 2.** In Colorado Revised Statutes, **amend with**
6 **amended and relocated provisions** article 36 of title 35 as follows:

7 **ARTICLE 36**

8 **Commodities Handlers and Farm Products**

9 **PART 1**

10 **COMMON PROVISIONS**

11 **35-36-101. [Formerly 35-36-101 and similar to**
12 **35-37-101] Short title.** The short title of this article 36 is the
13 "Commodity Handler AND FARM PRODUCTS Act".

14 **35-36-102. [Formerly 35-36-102 except as noted**
15 **otherwise] Definitions - rules.** As used in this article 36, unless the
16 context otherwise requires:

17 (1) **[Formerly 35-37-103 (1)]** "Agent" means ~~any~~ A person who,
18 on behalf of ~~any~~ A dealer or small-volume dealer, buys, receives,
19 contracts for, or solicits any farm products from or sells farm products for
20 the owner ~~thereof~~ OF THE FARM PRODUCTS or who negotiates the
21 consignment or purchase of any farm products on behalf of ~~any~~ A dealer
22 or small-volume dealer.

23 ~~(1)~~ (2) "Bailee" means a person who, by a negotiable warehouse
24 receipt or other document of title, acknowledges possession of goods and
25 contracts to deliver them.

26 ~~(2)~~ (3) "Bailment" means the act of delivering goods or personal
27 property to another in trust.

1 ~~(3)~~ (4) "Commercial feeding" means the feeding of livestock by
2 a person who receives compensation from the owner of the livestock for
3 the feeding.

4 (5) "COMMISSION" MEANS THE STATE AGRICULTURAL COMMISSION
5 CREATED IN SECTION 35-1-105.

6 ~~(4)~~ (6) "Commissioner" means the commissioner of agriculture or
7 ~~his or her~~ THE COMMISSIONER'S designee.

8 ~~(5)~~ (7) "Commodity" means unprocessed small, hard seeds or
9 fruits such as wheat, corn, oats, barley, rye, sunflower seeds, soybeans,
10 beans, grain sorghum, industrial hemp, and such other seeds or fruits as
11 THE COMMISSIONER may ~~be determined by the commissioner~~ DETERMINE.

12 ~~(6)~~ (8) (a) "Commodity handler" means A PERSON:

13 (I) ~~Any person~~ Engaged in buying any commodities from the
14 owner for processing or resale;

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

17 (III) ~~Any person~~ Engaged in soliciting or negotiating sales of
18 commodities between the vendor and purchaser respectively;

19 (IV) ~~Any person~~ Who receives on consignment or solicits from
20 the owner ~~thereof~~ OF A COMMODITY any kind of commodity for sale on
21 commission on behalf of the owner, ~~or~~ who accepts any commodity in
22 trust from the owner ~~thereof~~ OF THE COMMODITY for the purpose of
23 resale, or who sells or offers for sale on commission any commodity or
24 in any way handles any commodity for the account of the owner ~~thereof~~
25 OF THE COMMODITY; or

26 (V) ~~Any person~~ Engaged in buying any commodity from the
27 owner ~~thereof~~ OF THE COMMODITY for the commercial feeding of

1 livestock that are owned wholly or in part by another, at an animal
2 feeding operation with a capacity of more than two thousand five hundred
3 head of livestock. ~~The commissioner shall establish rules to determine the~~
4 ~~capacity of animal feeding operations for purposes of this article 36.~~

5 (b) "Commodity handler" does not include:

6 (I) A bona fide retail grocery merchant or restaurateur having a
7 fixed or established place of business in Colorado ~~as long as~~ IF the use of
8 commodities by the person is directly related to the operation of the
9 person's retail grocery or restaurant; or

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

14 ~~(7)~~ (9) "Compensation" means something of value or benefit,
15 whether in cash, in kind, or in any other form.

16 (10) **[Formerly 35-37-103 (5)]** "Consignor" includes ~~any~~ A person
17 who ships or delivers to ~~any~~ A dealer or small-volume dealer any farm
18 products for handling, sale, or resale.

19 ~~(8)~~ (11) "Credit sale contract" means a contract for the sale of a
20 commodity OR A FARM PRODUCT when the sale price is to be paid on a
21 date later than thirty days after delivery of the commodity OR FARM
22 PRODUCT to the buyer and includes those contracts commonly referred to
23 as deferred payment contracts, deferred pricing contracts, and price later
24 contracts.

25 (12) **[Formerly 35-37-103 (7)]** (a) "Dealer" means A PERSON:

26 (I) ~~Any person~~ Engaged in buying any farm products from the
27 owner for processing or resale;

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

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

5 (IV) ~~Any person~~ Who receives on consignment or solicits from
6 the owner ~~thereof~~ OF A FARM PRODUCT any kind of farm product for sale
7 on commission on behalf of the owner, ~~or~~ who accepts any farm product
8 in trust from the owner ~~thereof~~ OF THE FARM PRODUCT for the purpose of
9 resale, or who sells or offers for sale on commission any farm product or
10 in any way handles any farm product for the account of, or as an agent of,
11 the owner ~~thereof~~ OF THE FARM PRODUCT; or

12 (V) ~~Any person~~ Engaged in buying any farm products OR
13 COMMODITIES from the owner ~~thereof~~ OF THE FARM PRODUCTS OR
14 COMMODITIES for the commercial feeding of livestock that are owned
15 wholly or in part by another, at an animal feeding operation with a
16 capacity of more than two thousand five hundred head of livestock. ~~The~~
17 ~~commissioner shall establish rules to determine the capacity of animal~~
18 ~~feeding operations for purposes of this article 37.~~

19 (b) "Dealer" does not include:

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

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

1 ~~(9)~~ (13) "Department" means the department of agriculture.

2 (14) **[Formerly 35-37-103 (8)]** (a) (I) "Farm products" includes
3 the following unprocessed products produced in Colorado or owned by
4 any Colorado resident, dealer, or small-volume dealer:

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

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

10 (C) Milk; and

11 (D) Honey.

12 (II) "Farm products" also includes:

13 (A) Ensiled corn;

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

15 (C) Industrial hemp.

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

18 ~~(10)~~ (15) "Financial statement" means a statement PREPARED BY
19 A CERTIFIED PUBLIC ACCOUNTANT that accurately presents the financial
20 condition of an applicant or licensee and that includes, at a minimum, a
21 balance sheet and a statement of income.

22 ~~(11)~~ (16) "Forwarded commodities" means commodities sent to
23 a terminal warehouse and put on open storage in the name of the
24 forwarding warehouse operator.

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

27 ~~(a) The same warehouse operator operates each warehouse in~~

1 ~~conjunction with any other;~~

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

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

6 ~~(13)~~ (17) "Handling" means buying commodities for resale or
7 processing, brokering commodities, or receiving and loading out
8 commodities tendered for storage.

9 ~~(13.5)~~ (18) "Industrial hemp" has the meaning set forth in section
10 35-61-101 (7).

11 ~~(14)~~ (19) "Livestock" has the same meaning as set forth in section
12 35-1-102 (6).

13 ~~(15)~~ (20) "Loss" means any monetary loss to a producer or owner
14 that is of an extraordinary nature and that includes but is not limited to,
15 bankruptcy, embezzlement, theft, fraud, or negligence.

16 (21) **[Formerly 35-37-103 (9.5)]** "Marijuana" has the same
17 meaning as set forth in section 16 (2)(f) of article XVIII of the Colorado
18 constitution.

19 ~~(16)~~ (22) "Market value" means the value required by law to be
20 used by insurance underwriters in paying for losses of commodities
21 insured for their actual value.

22 ~~(17)~~ (23) "Negotiable warehouse receipt" means a receipt that
23 specifies by its terms that the goods are to be delivered to the bearer or to
24 the order of a named person. Any other receipt is nonnegotiable.

25 ~~(18)~~ (24) "Owner" means any person in whom legal title to any
26 commodity OR FARM PRODUCT is vested, whether produced by the owner
27 or acquired by purchase.

1 ~~(19)~~ (25) "Person" includes:

2 (a) ~~Any~~ AN individual, firm, association, partnership, or
3 corporation; or

4 (b) The commissioner.

5 ~~(20)~~ (26) "Processing" means the operation of canning, DRYING,
6 fermenting, distilling, extracting, preserving, grinding, crushing, flaking,
7 mixing, or otherwise changing the form of a commodity OR FARM
8 PRODUCT for the purpose of selling OR RESELLING any of the resulting
9 products.

10 ~~(21)~~ (27) "Producer" means ~~any grower of~~ A PERSON ENGAGED IN
11 GROWING commodities OR FARM PRODUCTS OR PRODUCING FARM
12 PRODUCTS.

13 ~~(22)~~ (28) "Provisional insurance coverage" means a certificate or
14 any other satisfactory evidence of fire and extended coverage insurance
15 issued by an insurance company authorized to do business in this state
16 insuring every commodity in the custody of a warehouse operator,
17 whether held for others or owned by the warehouse operator, at the full
18 local market value of each commodity.

19 ~~(23)~~ (29) "Public warehouse" includes ~~any~~ AN elevator, mill,
20 warehouse, or other structure in which commodities are received from
21 one or more members of the public for storage.

22 (30) [**Formerly 35-37-103 (14)**] "Retail grocery merchant" means
23 ~~any~~ A person whose sales ~~are~~ CONSIST OF more than fifty percent
24 nonfarm-product AND NONCOMMODITY grocery household merchandise.

25 ~~(24)~~ (31) "Scale ticket" means a receipt issued for a commodity
26 that names the person to whom it is issued and the kind and grade of the
27 commodity stored.

1 ~~(25)~~ (32) "Settlement sheet" means a summary of the A
2 commodity handler's transactions with an owner.

3 (33) **[Formerly 35-37-103 (15)]** "Small-volume dealer" means any
4 A person who:

5 (a) Does not qualify as a "dealer" under ~~subsection (7)(a)(II) to~~
6 ~~(7)(a)(V)~~ SUBSECTIONS (12)(a)(II) TO (12)(a)(V) OF THIS SECTION;

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

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

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

14 ~~(e)~~ (d) Does not purchase farm products for commercial feeding
15 of livestock.

16 ~~(26)~~ (34) "Storage" means the holding of a commodity OR FARM
17 PRODUCT for another by a person who does not directly own the
18 commodity OR FARM PRODUCT. "Storage" does not include transportation
19 of a commodity OR FARM PRODUCT.

20 ~~(27)~~ (35) "Terminal warehouse" means any A public warehouse
21 licensed by the ~~Colorado~~ department, ~~of agriculture~~, the United States
22 department of agriculture, or any state that has a warehouse examination
23 cooperative agreement with Colorado or the United States department of
24 agriculture.

25 ~~(28)~~ (36) "Warehouse operator" includes any A person ~~or existing~~
26 ~~legal entity~~ owning, operating, or controlling any A public warehouse.

27 **35-36-103. [Formerly 35-36-111 and similar to 35-37-116 (1)]**

1 **and 35-37-120] Commissioner - rules - delegation of powers and**

2 **duties.** (1) The commissioner ~~may~~ SHALL promulgate ~~such~~ rules in
3 accordance with article 4 of title 24 as are necessary for the
4 administration of this article 36. THE COMMISSIONER'S RULES MUST
5 INCLUDE RULES REGARDING:

- 6 (a) FINANCIAL ASSURANCE REQUIREMENTS, INCLUDING A
7 SCHEDULE FOR APPLICANTS TO FILE A BOND WITH THE COMMISSIONER;
- 8 (b) REQUIREMENTS FOR MAINTAINING RECORDS;
- 9 (c) INITIAL AND RENEWAL LICENSE REQUIREMENTS;
- 10 (d) REQUIREMENTS FOR CREDIT SALE CONTRACTS;
- 11 (e) REQUIREMENTS FOR WAREHOUSE OPERATIONS; AND
- 12 (f) THE CAPACITY OF ANIMAL FEEDING OPERATIONS FOR PURPOSES
13 OF THIS ARTICLE 36.

14 (2) The commissioner ~~shall be~~ IS the enforcing authority of this
15 article 36, and the commissioner or the commissioner's authorized
16 representative ~~shall have~~ HAS free and unimpeded access to all places of
17 business and all business records of ~~the~~ A licensee LICENSED UNDER PART
18 2 OR PART 3 OF THIS ARTICLE 36 THAT ARE pertinent to any proper inquiry
19 in the administration of this article 36. Any person in whom the
20 enforcement of ~~any provision of~~ this article 36 is vested has the power of
21 a peace officer as to the enforcement.

22 (3) The COMMISSIONER MAY DELEGATE THE COMMISSIONER'S
23 powers and duties ~~of the commissioner~~ set forth in this article 36 ~~may be~~
24 ~~delegated~~ to qualified employees of the department.

25 **35-36-104. [Formerly 35-36-120 and similar to**
26 **35-37-109] Cease-and-desist order - restraining order.** (1) If the
27 commissioner determines that there exists a violation of ~~any provision of~~

1 this article 36 or of any rule promulgated under the authority of this
2 article 36, the commissioner may issue a cease-and-desist order, which
3 may require ~~any~~ A person to cease functioning as a commodity handler,
4 DEALER, SMALL-VOLUME DEALER, OR AGENT except for those functions
5 necessary to prevent spoilage of products stored in ~~his or her~~ THE
6 PERSON'S public warehouse OR A DEALER'S WAREHOUSE. The order ~~shall~~
7 MUST set forth the provision alleged to have been violated, the facts
8 alleged to have constituted the violation, and the requirement that all
9 functions, except those necessary to prevent spoilage, ~~be ceased forthwith~~
10 CEASE IMMEDIATELY. At any time after the date of the service of the order
11 to cease and desist, the person may request a hearing on the question of
12 whether ~~or not~~ the violation has occurred. The hearing shall be concluded
13 in not more than ten days after the request and shall be conducted
14 pursuant to ~~the provisions of~~ article 4 of title 24.

15 (2) ~~In the event that any~~ IF A person fails to comply with a
16 cease-and-desist order within twenty-four hours after service, the
17 commissioner may apply to a court of competent jurisdiction to
18 temporarily or permanently restrain or enjoin the act or practice in
19 question and to enforce compliance with this article 36 or any rule or
20 order pursuant to this article 36. In ~~any such~~ THE action, the commissioner
21 ~~shall~~ IS not ~~be~~ required to plead or prove irreparable injury or the
22 inadequacy of a remedy at law. ~~Under no circumstances shall~~ The court
23 SHALL NOT require the commissioner to post a bond.

24 (3) ~~No~~ A stay of a cease-and-desist order shall NOT be issued
25 before a hearing ~~thereon~~ ON THE ORDER involving both parties.

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

1 **35-36-105. [Formerly 35-36-121 and similar to 35-37-117] Civil**
2 **penalties.** (1) ~~Any~~ A person who violates ~~any provision of~~ this article 36
3 or any rule enacted pursuant to this article 36 is subject to a civil penalty
4 as determined by the commissioner. The maximum penalty ~~shall not~~
5 ~~exceed~~ IS one thousand dollars per violation per day.

6 (2) ~~No~~ A civil penalty ~~may~~ SHALL NOT be imposed unless the
7 person charged is given notice and an opportunity for a hearing pursuant
8 to article 4 of title 24.

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

13 (4) Under circumstances where the commissioner did not have
14 probable cause to impose a civil penalty, the person charged may recover
15 ~~his or her~~ THE PERSON'S costs and attorney fees from the department. ~~of~~
16 ~~agriculture.~~

17 (5) THE COMMISSIONER SHALL TRANSMIT all money collected from
18 civil penalties pursuant to ~~the provisions of~~ this section ~~shall be~~
19 ~~transmitted~~ to the state treasurer, ~~and credited~~ WHO SHALL CREDIT IT to the
20 inspection and consumer services cash fund created in section 35-1-106.5.

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

24 **35-36-106. [Formerly 35-36-124 and similar to**
25 **35-37-119] Penalties.** (1) ~~Any~~ A person who violates ~~any of the~~
26 ~~provisions of section 35-36-123 (1)(a), (1)(b), (1)(c), (1)(d), (1)(e), or~~
27 ~~(1)(j)~~ SECTION 35-36-217 (1)(a) TO (1)(e) OR (1)(j) OR SECTION 35-36-313

1 (1)(a) TO (1)(e) commits a class 6 felony and shall be punished as
2 provided in section 18-1.3-401. ~~Any~~ A person who violates ~~any of the~~
3 ~~provisions of section 35-36-123 (1)(f)~~ SECTION 35-36-217 (1)(f) OR
4 35-36-313 (1)(f) OR (1)(j) commits theft, as defined in section 18-4-401.
5 ~~Any~~ A PERSON WHO VIOLATES SECTION 35-36-217 (1)(l) OR 35-36-313
6 (1)(k) COMMITS FRAUD BY CHECK, AS DEFINED IN SECTION 18-5-205. A
7 person who violates ~~any of the provisions of section 35-36-123 (1)(g),~~
8 ~~(1)(h), or (1)(i)~~ SECTION 35-36-217 (1)(g) TO (1)(i) commits a class 1
9 misdemeanor and shall be punished as provided in section 18-1.3-501.

10 (2) ~~Any~~ A person who violates any other provision of this article
11 36 commits a class 1 misdemeanor and shall be punished as provided in
12 section 18-1.3-501.

13 (3) Civil suits and criminal prosecutions arising by virtue of ~~any~~
14 ~~of the provisions of~~ this article 36 may be commenced and tried either in
15 the county in which the commodities OR FARM PRODUCTS were received
16 by the commodity handler, DEALER, SMALL-VOLUME DEALER, OR AGENT,
17 or in the county in which the principal place of business of the commodity
18 handler, DEALER, SMALL-VOLUME DEALER, OR AGENT is located, or in the
19 county in which the violation of this article 36 occurred. The attorney
20 general or the district attorney for the judicial district in which the
21 violation of ~~any of the provisions of~~ this article 36 occurs shall, upon the
22 request of any enforcing officer or other interested person, prosecute the
23 violation.

24 **35-36-107. [Formerly 35-36-122 and similar to**
25 **35-37-110] Appeal.** Any action of the commissioner with reference to the
26 administration of this article 36 may be reviewed by any court of
27 competent jurisdiction pursuant to ~~the provisions of~~ section 24-4-106 only

1 after all administrative remedies have been exhausted.

2 **35-36-108. [Formerly 35-36-125 and similar to**
3 **35-37-122] Repeal of article.** This article 36 is repealed, effective July
4 ~~1, 2020.~~ Prior to SEPTEMBER 1, 2031. BEFORE the repeal, the licensing
5 functions of the commissioner ~~shall be reviewed as provided for in~~ ARE
6 SCHEDULED FOR REVIEW IN ACCORDANCE WITH section 24-34-104.

7 PART 2

8 COMMODITIES

9 **35-36-201. [Formerly 35-36-103] Licenses - commodity handler**
10 **- rules.** (1) ~~No~~ A person shall NOT act as a commodity handler in this
11 state without having first obtained a license from the department.

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

15 **35-36-202. [Formerly 35-36-104] Exemptions.** (1) The
16 provisions of this ~~article 36~~ PART 2 that apply to warehouse operators do
17 not apply to the owner or operator of ~~any~~ A public warehouse or other
18 facility where the owner or operator:

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

23 (b) Receives only commodities that the owner or operator has
24 purchased, ~~or that he or she~~ THE OWNER OR OPERATOR is processing or
25 cleaning for the owners of the commodities, or that ~~he or she~~ THE OWNER
26 OR OPERATOR is maintaining for such other purposes as the department
27 may, by rule, prescribe; and

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

9 **35-36-203. [Formerly 35-36-105] Commodity handler licenses**
10 **- application requirements - fee.** (1) (a) ~~Each~~ AN applicant for a
11 commodity handler license shall pay, for each year in which the license
12 is to be valid, a license fee established by the ~~agricultural~~ commission,
13 which license fee the department shall collect and transmit to the state
14 treasurer, who shall credit the ~~same~~ MONEY to the inspection and
15 consumer services cash fund created in section 35-1-106.5.

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

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

24 (a) The name and address of the applicant and, if the applicant is
25 a firm, exchange, association, or corporation, the full name of each
26 member of the firm or the names of the officers of the exchange,
27 association, or corporation;

1 (b) ~~The application shall also state the principal business address~~
2 of the applicant in the state of Colorado and in every other state in which
3 the applicant does business and the names of the persons authorized to
4 receive and accept service of summons and legal notices of all kinds on
5 behalf of the applicant in each state. The applicant ~~shall further~~ MUST
6 satisfy the commissioner of its character, responsibility, and good faith in
7 seeking to carry on the business stated in the application. ~~In determining~~
8 ~~a person's character,~~ The commissioner shall ~~be governed by the~~
9 ~~provisions of~~ MAKE A DETERMINATION OF A PERSON'S CHARACTER IN
10 ACCORDANCE WITH section 24-5-101.

11 ~~(b)~~ (c) The location of each public warehouse of the applicant;
12 ~~(c)~~ (d) The total rated storage capacity in bushels of each public
13 warehouse;

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

17 ~~(e)~~ (f) Any other information that the commissioner deems
18 reasonably necessary to carry out the purposes of this ~~article 36~~ PART 2.

19 (3) THE COMMISSIONER SHALL REVOKE ANY LICENSE GRANTED AS
20 A RESULT OF AN APPLICATION THAT IS FOUND TO HAVE BEEN MADE
21 THROUGH fraud or misrepresentation. ~~in making any application shall in~~
22 ~~and of itself work a revocation of any license granted pursuant to the~~
23 ~~application.~~ All indicia of the possession of a license ~~shall at all times be~~
24 IS the property of the state of Colorado, and each licensee is entitled to the
25 possession of the indicia only while ~~said~~ THE license remains valid and
26 current.

27 **35-36-204. [Formerly 35-36-106] Licenses - requirements -**

1 **rules.** (1) To receive or maintain a license, each applicant or licensee
2 ~~shall~~ FOR AN INITIAL OR RENEWAL LICENSE MUST satisfy the following
3 requirements:

4 (a) The applicant or licensee shall furnish the commissioner with
5 evidence of minimum provisional insurance coverage in an amount
6 sufficient to protect the applicant's storage obligations. If, at any time, the
7 commissioner evaluates an applicant's provisional insurance coverage to
8 be insufficient, the commissioner may require such additional insurance
9 as the commissioner considers sufficient. Failure to provide evidence of
10 the additional insurance within thirty days after written notice from the
11 commissioner constitutes grounds for the suspension or revocation of the
12 license.

13 (b) The applicant ~~or licensee shall~~ MUST furnish the commissioner
14 with a financial statement that presents accurately ~~his or her~~ THE
15 APPLICANT'S OR LICENSEE'S financial condition. The commissioner may
16 promulgate rules that clearly state the information required from each
17 applicant or licensee under this section. Any financial statement
18 submitted to the commissioner in support of a license application made
19 pursuant to ~~the provisions of this article 36 shall be~~ PART 2 IS confidential.
20 Whenever the commissioner deems it appropriate, ~~he or she~~ THE
21 COMMISSIONER may require ~~any~~ AN applicant for an initial license, ~~any~~ AN
22 applicant for a renewal of a license, or ~~any~~ A licensee to submit a
23 financial statement or an audit prepared by a certified public accountant
24 or any other information the commissioner deems necessary to determine
25 whether the person is in an adequate financial position to carry out ~~his or~~
26 ~~her~~ THE PERSON'S duties as a licensee.

27 (2) If ~~any~~ A licensee fails to apply for license renewal before an

1 annual date specified by the commissioner by rule, the licensee shall,
2 upon application for a renewal license and before the license is issued,
3 pay a penalty fee as established by the ~~agricultural~~ commission. The
4 penalty ~~fee shall be~~ IS in addition to the license fee.

5 **35-36-205. [Formerly 35-36-107] Disciplinary powers - licenses.**

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

10 (a) Violated ~~any of the provisions of this article 36~~ PART 2 OR
11 SECTION 35-36-104 or violated any of the rules promulgated by the
12 commissioner pursuant to this article 36;

13 (b) Failed to place and keep the premises of the licensed business
14 in the manner required under this ~~article 36~~ PART 2;

15 (c) Been convicted of a felony under the laws of this state, or of
16 any other state, or of the United States; except that, in consideration of the
17 conviction of a felony, the commissioner ~~shall be~~ IS governed by ~~the~~
18 ~~provisions of~~ section 24-5-101;

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

21 (e) Failed or refused to execute and deliver to the commissioner
22 a surety bond as required by ~~section 35-36-119~~ SECTION 35-36-216;

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

25 (g) Failed to comply with any lawful order of the commissioner
26 concerning the administration of this ~~article 36~~ PART 2; OR

27 (h) Had a license revoked, suspended, or not renewed or has been

1 placed on probation in another state for cause, if the cause could be the
2 basis for similar disciplinary action in this state.

3 (2) All proceedings concerning the denial, refusal to renew,
4 revocation, or suspension of a license or the placing of a licensee on
5 probation shall be conducted pursuant to ~~the provisions of article 4 of title~~
6 24.

7 (3) Any previous violation of ~~the provisions of this article 36 PART~~
8 2 OR SECTION 35-36-104 by the applicant or any person connected with
9 the applicant in the business for which the applicant seeks to be licensed
10 or, in the case of a partnership or corporation applicant, any previous
11 violations of ~~the provisions of this article 36 PART 2 OR SECTION~~
12 35-36-104 by a partner, officer, director, or stockholder of more than
13 thirty percent of the outstanding shares, is sufficient grounds for the
14 denial of a license.

15 **35-36-206. [Formerly 35-36-108] Bailment of commodities.**

16 (1) Acceptance of commodities for storage by a warehouse operator ~~shall~~
17 ~~constitute~~ CONSTITUTES a bailment and not a sale. Stored commodities
18 ~~shall~~ ARE not ~~be liable~~ SUBJECT to seizure upon process of a court in an
19 action against the bailee, except upon action by owners of the stored
20 commodities or the commissioner to enforce the terms ~~thereof~~ OF THE
21 BAILMENT; but, in the event of the failure or insolvency of a bailee,
22 commodities shall be first applied exclusively to the settlement on an
23 equal basis of all outstanding negotiable warehouse receipts and other
24 open storage obligations for commodities so stored with the bailee.

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

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

1 **35-36-207. [Formerly 35-36-109] Credit sale contracts - rules.**

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

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

9 (b) The charges for handling, if any;

10 (c) The name and address of the producer or owner and the
11 signature of the commodity handler;

12 (d) The contract number;

13 (e) The words "not a storage contract" printed in block capital
14 letters in bold-faced type, conspicuously on the first page of the contract;

15 (f) One or more statements specified by the commissioner by rule,
16 including one that warns a producer that entering into a credit sale
17 contract entails a risk that the bond may not completely protect the
18 producer from loss in the event of a failure of the commodity handler.

19 (2) A commodity ~~handler's~~ HANDLER SHALL RETAIN THE
20 COMMODITY HANDLER'S records ~~shall be retained~~ for a period of two
21 years. ~~and shall~~ THE RECORDS MUST reflect those credit sale contracts that
22 have been cancelled and those that are still open ~~The records shall~~ AND
23 be kept at the commodity handler's place of business at all times.

24 (3) THE COMMISSIONER MAY REQUIRE an annual report of the
25 status of the credit sale contracts ~~may be required by the commissioner~~
26 along with the financial statement required in section ~~35-36-106~~
27 35-36-204 (1)(b).

1 (4) A COMMODITY HANDLER SHALL CONSECUTIVELY NUMBER all
2 credit sale contracts entered into by a THE commodity handler ~~shall be~~
3 ~~consecutively numbered by the commodity handler~~, and MAKE AVAILABLE
4 copies ~~thereof shall be made available by the commodity handler~~ OF THE
5 CREDIT SALE CONTRACTS for inspection and examination by the
6 commissioner or ~~his or her~~ THE COMMISSIONER'S authorized agents.

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

- 14 (a) Cash;
- 15 (b) Commodity assets, including commodities and warehouse
16 receipts or other ~~evidences~~ EVIDENCE of storage of commodities;
- 17 (c) Credit sale contracts with other commodity handlers licensed
18 by the department; ~~of agriculture~~;
- 19 (d) An irrevocable letter of credit in favor of the commissioner,
20 which letter of credit ~~shall be~~ IS subject to ~~the provisions of section~~
21 ~~35-36-119~~ SECTION 35-36-216; or
- 22 (e) Net worth of the commodity handler of at least four times the
23 value of the open credit sale contracts.

24 **35-36-208. [Formerly 35-36-110] Commodity grades**
25 **established - rules.** The department may promulgate rules concerning
26 commodity grades in accordance with the standards established by the
27 United States department of agriculture as the official grain standards of

1 the United States government.

2 **35-36-209. [Formerly 35-36-112] Negotiable warehouse**
3 **receipts - rules.** (1) A negotiable warehouse receipt must be either a
4 paper or an electronic document. At no time may a paper receipt and an
5 electronic receipt represent the same lot of the commodity. A licensee
6 may issue warehouse receipts by use of a written warehouse receipt
7 system, an electronic warehouse receipt system, or both.

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

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

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

22 **35-36-210. [Formerly 35-36-113] Use of scale tickets and**
23 **negotiable warehouse receipts.** (1) It is unlawful to issue paper
24 negotiable warehouse receipts other than those furnished by the
25 department. ~~The~~ A licensee shall issue these receipts consecutively, as
26 numbered, and each receipt must state the date on which it is actually
27 issued.

1 (2) Nothing in this ~~article 36 shall be construed to prevent~~ PART
2 PREVENTS the issuance of nonnegotiable scale tickets or other
3 nonnegotiable ~~evidences~~ EVIDENCE of a similar nature showing the date
4 on which the commodities were received, the quantities received, and the
5 condition of the commodities upon their delivery.

6 (3) When partial withdrawal of a commodity is made by an owner,
7 the warehouse operator shall make an appropriate notation ~~thereof~~ OF THE
8 PARTIAL WITHDRAWAL on the depositor's nonnegotiable warehouse
9 receipt or on such other records as may be prescribed by the department.
10 If, BEFORE THE PARTIAL WITHDRAWAL OF THE COMMODITY, the warehouse
11 operator has ~~theretofore~~ issued a negotiable warehouse receipt to the
12 owner, the warehouse operator shall claim, cancel, and replace it with a
13 new negotiable warehouse receipt, showing the amount of the owner's
14 commodity remaining in the public warehouse.

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

21 (5) Acceptance of commodities for storage by a warehouse
22 operator for which a negotiable warehouse receipt is issued ~~shall~~
23 ~~constitute~~ CONSTITUTES a bailment process and not a sale. If a warehouse
24 operator fails to claim and cancel a negotiable warehouse receipt issued
25 on delivery for commodities stored in the warehouse operator's public
26 warehouse and the negotiation of which would transfer the right of
27 possession of that commodity, the warehouse operator ~~shall be~~ IS liable,

1 to a good faith purchaser for value, for ~~his or her~~ THE WAREHOUSE
2 OPERATOR'S failure to deliver to the purchaser all the commodities
3 specified in the receipt. This liability ~~shall apply~~ APPLIES whether the
4 purchaser acquired title to the negotiable warehouse receipt before, on,
5 or after the delivery of any part of the commodity by the warehouse
6 operator.

7 **35-36-211. [Formerly 35-36-114] Commodity handler records**
8 **- separate and distinct - time of maintenance - definition.** (1) A
9 commodity handler operating another business in conjunction with, or in
10 proximity to, the handler's commodity handling business shall keep a
11 complete set of records for the commodity handling business, entirely
12 separate and distinct from the accounts and records of that other business.
13 The deposits of commodities for the account of another business or for
14 commodities owned by the commodity handler shall be entered in the
15 books of the commodity handler in the same manner as those of other
16 depositors. For the purpose of this section, "other business" ~~shall mean~~
17 MEANS any other separate and legally established enterprise that is distinct
18 and separate from the legal and financial transactions of the commodity
19 handling business.

20 (2) Commodity handlers shall maintain adequate records and
21 systems for the filing and accounting of negotiable warehouse receipts,
22 cancelled negotiable warehouse receipts, scale tickets, and other
23 documents and transactions necessary or common to the commodity
24 handling industry. A COMMODITY HANDLER SHALL RETAIN cancelled
25 negotiable warehouse receipts, copies of scale tickets, and copies of other
26 documents evidencing ownership or ownership liability ~~shall be retained~~
27 ~~by the commodity handler~~ for a period of at least three years after the date

1 of cancellation.

2 (3) A COMMODITY HANDLER SHALL POST A position report ~~shall be~~
3 ~~posted~~ daily; ~~by the commodity handler~~; however, if a daily position
4 report poses a substantial hardship, the commissioner may authorize, in
5 writing, a weekly position report. The position report ~~shall~~ MUST include,
6 but need not be limited to, total stocks by commodities received or loaded
7 out, ~~forwardings~~ FORWARDING of commodities to terminal storage,
8 conversions of whole commodities to feed, negotiable warehouse receipt
9 obligations, open storage obligations, credit sale contracts, and
10 public-warehouse-owned commodities.

11 (4) A scale ticket shall be issued for each receipt of commodities.
12 A copy of the scale ticket shall be given to the owner. ~~The~~ A commodity
13 ~~handler's~~ HANDLER SHALL FILE THE COMMODITY HANDLER'S copy ~~shall be~~
14 ~~filed~~ with all other such copies in numerical sequence AND SHALL FILE
15 AND RETAIN voided scale tickets ~~shall be filed and retained~~ at the
16 commodity handler's place of business. Scale tickets shall be issued in
17 numerical sequence. An issued scale ticket ~~shall~~ MUST contain the
18 following: Sequential number; date; owner's name; commodity handler's
19 name; commodity; test weight with dockage, if applicable; grade, if
20 assigned; gross weight; tare weight; and net weights, in the case of
21 weights from hopper scales.

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

26 **35-36-212. [Formerly 35-36-115] Warehouse operator's**
27 **liability for disposal of tainted commodities.** (1) A warehouse operator

1 ~~shall be~~ IS liable for any loss or deterioration of commodities in a public
2 warehouse caused by the warehouse operator's failure to exercise
3 reasonable care of the commodities.

4 (2) If a warehouse operator discovers that, as a result of a
5 condition of a commodity placed in the warehouse operator's public
6 warehouse of which ~~he or she~~ THE WAREHOUSE OPERATOR had no notice
7 at the time of deposit, the commodity is a hazard to other commodities or
8 to persons or to the public warehouse and if the commodity is not
9 immediately removed by the owner upon the warehouse operator's
10 request, the warehouse operator may sell the commodity after reasonable
11 notice to all persons known to claim an interest in the commodity. If the
12 warehouse operator is unable to sell the commodity after a reasonable
13 effort, the warehouse operator may dispose of it in any other lawful
14 manner, and shall incur no liability to the owner for the disposition.

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

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

22 **35-36-213. [Formerly 35-36-116] Enforcement - inspection of**
23 **commodity handlers' property - confidentiality.** (1) The department
24 has the power to inspect commodity handlers' places of business. The
25 department shall investigate any complaint concerning the operation of
26 any commodity handler, or any person attempting or offering to act as
27 ~~such~~ A COMMODITY HANDLER, subject to ~~the provisions of this article 36~~

1 PART 2.

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

7 (3) The commissioner, upon consent of the licensee or upon
8 obtaining an administrative search warrant, has the right to inspect any
9 commodity handler's place of business where commodities are stored,
10 handled, or received and any records pertaining to storage obligations and
11 commodity positions kept by the commodity handler that pertain to the
12 operation ~~thereof~~ OF THE PLACE OF BUSINESS. The property, books,
13 records, accounts, and papers pertaining to storage obligations and
14 commodity positions of every commodity handler ~~shall be~~ ARE subject to
15 inspection and copying by the commissioner.

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

26 (5) The commissioner may examine the ledgers, books, accounts,
27 memoranda, and other documents and the commodities, scales, measures,

1 and other items in connection with the business of any licensee relating
2 to whatever transactions may be involved.

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

7 (7) If the investigation is against a licensee, the commissioner
8 shall proceed to ascertain the names and addresses of all producers,
9 dealers, or owners of commodities, together with the accounts
10 unaccounted for or due and owing to them by ~~said~~ THE licensee, and shall
11 request the producers, dealers, or owners to file verified statements of
12 their respective claims with the commissioner. If a producer, dealer, or
13 owner ~~so requested~~ fails, refuses, or neglects to file a verified statement
14 in the office of the commissioner within thirty days after the date of the
15 request, the commissioner ~~shall thereupon be~~ IS relieved of any further
16 duty or action under this ~~article 36~~ PART 2 on behalf of ~~said~~ THE producer,
17 dealer, or owner.

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

20 (9) (a) If the commissioner determines, after concluding an
21 investigation on any complaint, that reasonable grounds exist to believe
22 that a licensee has violated ~~any of the provisions of this article 36~~ PART
23 2, the commissioner shall notify the licensee that the complaint is valid
24 and shall inform the licensee of ~~his or her~~ THE LICENSEE'S opportunity to
25 request a hearing, in writing, on the complaint within ten days after the
26 date of the notice.

27 (b) Upon the receipt of a request for a hearing from a licensee or

1 if the commissioner determines that a hearing concerning any licensee is
2 necessary, the commissioner shall cause a copy of the complaint or the
3 grounds specified in ~~section 35-36-107~~ SECTION 35-36-205, together with
4 a notice of the time and place of the hearing, to be served personally or
5 by mail upon the licensee. Service shall be made at least ten days before
6 the hearing, which shall be held in the city or town in which the business
7 location of the licensee is situated or in which the transactions involved
8 allegedly occurred or at any convenient place designated by the
9 commissioner.

10 (c) The commissioner shall conduct the hearing pursuant to ~~the~~
11 ~~provisions of section 24-4-105~~. Thereafter, the commissioner shall enter
12 a decision specifying the relevant facts established at the hearing. If the
13 commissioner determines from the facts specified that the licensee has not
14 violated ~~any of the provisions of this article 36 PART 2 OR SECTION~~
15 ~~35-36-104~~, the COMMISSIONER SHALL DISMISS THE complaint. ~~shall be~~
16 ~~dismissed~~. If the commissioner determines from the facts specified that
17 the licensee has violated ~~any of the provisions of this article 36 PART 2 OR~~
18 ~~SECTION 35-36-104~~, and that the licensee has not yet made complete
19 restitution to the person complaining, the commissioner shall determine
20 the amount of damages, if any, to which the person is entitled as the result
21 of the violation and shall enter an order directing the offender to pay the
22 amount to the person complaining on or before the date fixed in the order.
23 A copy of the decision shall be furnished to all the respective parties to
24 the complaint.

25 (10) As a result of the hearing, the commissioner may also enter
26 any order suspending or revoking the license of a licensee or may place
27 the licensee on probation if the commissioner determines that the licensee

1 has committed any of the unlawful acts specified in ~~section 35-36-123~~
2 SECTION 35-36-217 or that the licensee has violated any of the provisions
3 of this ~~article 36~~ PART 2 OR SECTION 35-36-104.

4 (11) (a) If a person against whom an order, as specified in
5 subsection (9)(c) of this section, is made and issued fails, neglects, or
6 refuses to obey ~~said~~ THE order within the time specified in the order, the
7 commissioner may ~~thereupon~~ issue a further order to that person directing
8 the person to show cause why ~~his or her~~ THE PERSON'S license should not
9 be suspended or revoked for failure to comply with ~~said~~ THE order.

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

16 (c) The commissioner shall conduct the hearing pursuant to ~~the~~
17 ~~provisions of~~ section 24-4-105 and thereafter shall enter an order and
18 decision specifying the facts established at the hearing and either
19 dismissing the order to show cause, or directing the suspension or
20 revocation of the license held by the licensee, or making such other
21 conditional or probationary orders as may be proper. A copy of ~~said~~ THE
22 order and decision shall be furnished to the licensee.

23 (d) Nothing in this section ~~shall be construed as limiting~~ LIMITS
24 the power of the commissioner to revoke or suspend a license when ~~he or~~
25 ~~she~~ THE COMMISSIONER is satisfied ~~of the existence of any~~ THAT ONE OR
26 MORE of the ~~facts~~ ACTS specified in ~~section 35-36-123~~ SECTION 35-36-217
27 WAS COMMITTED.

1 (12) Whenever the absence of records or other circumstances
2 makes it impossible or unreasonable for the commissioner to ascertain the
3 names and addresses of all persons specified in subsection (7) of this
4 section, the commissioner, after exercising due diligence and making a
5 reasonable inquiry to secure ~~said~~ THE information from all reasonable and
6 available sources, ~~shall~~ IS not be liable or responsible for the claims or the
7 handling of claims that may subsequently appear or be discovered. After
8 ascertaining all claims, assessments, and statements in the manner set
9 forth in subsection (7) of this section, the commissioner may then demand
10 payment on the bond or irrevocable letter of credit on behalf of those
11 claimants whose claims have been determined by the commissioner as
12 valid and, in the instance of a bond, may settle or compromise ~~said~~ THE
13 claims with the surety company on the bond and execute and deliver a
14 release and discharge of the bond involved. Upon the refusal of the surety
15 company to pay the demand, the commissioner may bring an action on the
16 bond on behalf of the producer, dealer, or owner.

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

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

21 (b) In the case of delayed payment transactions, on the contractual
22 date of payment or, if there is no contractual date of payment, thirty days
23 following the transfer of title.

24 (14) A COMMODITY HANDLER SHALL MAINTAIN A public
25 warehouse ~~shall be maintained by the commodity handler~~ in a manner
26 adequate to provide a convenient and safe means of ingress and egress to
27 the various storage bins and compartments by those persons authorized

1 to make inspections.

2 (15) (a) Each warehouse shall be kept open for the purpose of
3 receiving commodities for storage and delivering commodities out of
4 storage every business day for a period of not less than six hours between
5 the hours of 8 a.m. and 6 p.m., except as provided in subsection (15)(b)
6 of this section. The commodity handler shall post conspicuously on the
7 door of the public entrance to ~~his or her~~ THE COMMODITY HANDLER'S
8 office and to ~~his or her~~ THE COMMODITY HANDLER'S licensed warehouse
9 a notice showing the hours during which the warehouse will be kept open;
10 except that the notice is not necessary when a warehouse is kept open
11 continuously from 8 a.m. to 6 p.m.

12 (b) Whenever a warehouse is not to be kept open as required by
13 subsection (15)(a) of this section, the notice posted as prescribed in
14 subsection (15)(a) of this section ~~shall~~ MUST state the period during which
15 the warehouse is to be closed and the name, address, and telephone
16 number, if any, of the person who ~~shall be~~ IS authorized to deliver
17 commodities stored in the warehouse upon lawful demand by the
18 depositor ~~thereof~~ OF THE COMMODITY or the holder of the receipt ~~thereof~~
19 OF THE COMMODITY, as the case may be.

20 **35-36-214. [Formerly 35-36-117] Procedure on shortage -**
21 **refusal to submit to inspection.** (1) Whenever it appears probable after
22 investigation that a licensed warehouse operator does not possess
23 sufficient commodities to cover the outstanding negotiable warehouse
24 receipts, scale tickets, or other ~~evidences~~ EVIDENCE of storage liability
25 issued or assumed by the warehouse operator, the department may give
26 notice to the warehouse operator that ~~he or she~~ THE WAREHOUSE
27 OPERATOR is required to do all or any of the following:

- 1 (a) Cover the shortage;
- 2 (b) Give an additional bond or irrevocable letter of credit;
- 3 (c) Submit to such inspection as the department may deem
- 4 necessary.

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

9 (a) Issue a cease-and-desist order pursuant to ~~section 35-36-120~~
10 SECTION 35-36-104;

11 (b) Take possession of all commodities in the public warehouse
12 owned, operated, or controlled by the warehouse operator and of all
13 books, papers, records, and property of all kinds used in connection with
14 the conduct or operation of the warehouse operator's public warehouse
15 business, whether the books, papers, records, and property pertain
16 specifically, exclusively, directly, or indirectly to that business or are
17 related to ~~his or her~~ THE WAREHOUSE OPERATOR'S handling, storage, or
18 use of commodities in any other business;

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

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

1 (3) Upon its taking possession of the commodities, the department
2 may give written notice of its action to the holders of all negotiable
3 warehouse receipts or other ~~evidences~~ EVIDENCE of deposits issued for
4 commodities to present their negotiable warehouse receipts or other
5 ~~evidences~~ EVIDENCE of deposits for inspection or to account for the same.
6 Thereupon, the department shall cause an audit to be made of the affairs
7 of the public warehouse with respect to any commodity in which there is
8 an apparent shortage, determine the amount of the shortage, and compute
9 the shortage as to each owner of the commodity. The department shall
10 attempt to notify the warehouse operator of the amount of the shortage
11 and attempt to notify each owner ~~thereby~~ affected BY THE SHORTAGE. If
12 the owner cannot be notified after a reasonable attempt by the department,
13 the department ~~shall~~ IS NOT ~~be held~~ liable for any losses incurred by the
14 owner.

15 (4) The department shall retain possession of the commodity in
16 the public warehouse and of the books, papers, records, and property of
17 the warehouse operator until such time as the warehouse operator or the
18 warehouse operator's bond or irrevocable letter of credit has satisfied the
19 claims of all holders of negotiable warehouse receipts or other ~~evidences~~
20 EVIDENCE of deposits. In case the shortage exceeds the amount of the
21 bond or irrevocable letter of credit, the warehouse operator's bond or
22 irrevocable letter of credit ~~shall satisfy~~ SATISFIES the claims pro rata.
23 Nothing in this section ~~shall be construed to prevent~~ PREVENTS the
24 department from complying with an order of a court of competent
25 jurisdiction to surrender possession.

26 (5) If during or after the audit provided for in this section or at any
27 other time the department is of the opinion that the warehouse operator

1 is insolvent or in danger of becoming ~~so~~ INSOLVENT or is unable to satisfy
2 the claims of all holders of negotiable warehouse receipts or other
3 ~~evidences~~ EVIDENCE of deposits, the department may petition a court of
4 competent jurisdiction in the county for the appointment of a receiver to
5 operate or liquidate the business of the warehouse operator in accordance
6 with applicable law.

7 (6) At any time within ten days after the department takes
8 possession of any commodities or the books, papers, records, and
9 property of any public warehouse, the warehouse operator may apply to
10 a court of competent jurisdiction for an order requiring the department to
11 show cause why the commodities, books, papers, records, and property
12 should not be restored to the warehouse operator's possession. Upon its
13 being served notice, the department ~~shall have not more than~~ HAS UP TO
14 ten days to respond.

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

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

21 (II) Determine the disposition of the commodities, books, papers,
22 records, and property that were in the public warehouse and seized
23 pursuant to this ~~article 36~~ PART 2.

24 (b) Pending determination of the ownership of the commodities,
25 any ~~funds~~ MONEY received from the disposition of the commodities shall
26 be placed in an interest-bearing escrow account.

27 (8) If the warehouse operator does not apply to a court of

1 competent jurisdiction for a show-cause order under subsection (6) of this
2 section, the department's action is presumed valid, and the commissioner
3 may determine the disposition of the commodities, books, papers, records,
4 and property that were in the public warehouse and seized pursuant to this
5 ~~article 36~~ PART 2. Pending determination of the ownership of the
6 commodities, any ~~funds~~ MONEY received from the disposition of the
7 commodities shall be placed in an interest-bearing escrow account.

8 (9) All expenses incurred by the department in carrying out ~~the~~
9 ~~provisions of this section shall be~~ ARE a first charge and lien upon the
10 assets of the warehouse operator; and the ~~expenses~~ DEPARTMENT may be
11 ~~recovered in~~ BRING a separate civil action ~~brought by the department,~~
12 ~~represented~~ THROUGH REPRESENTATION by the attorney general in a court
13 in the county in which the public warehouse is located TO RECOVER THE
14 EXPENSES, or they may be recovered at the same time and as a part of an
15 action filed under subsection (5) of this section.

16 (10) As a part of the expenses ~~so~~ incurred BY THE DEPARTMENT IN
17 CARRYING OUT THIS SECTION, the department or the receiver is authorized
18 to include the cost of adequate liability insurance necessary to protect the
19 department, its officers, and others engaged in carrying out ~~the provisions~~
20 ~~of~~ this section.

21 **35-36-215. [Formerly 35-36-118] Inspection fees.** (1) The state
22 ~~agricultural~~ commission, after conferring with interested industry groups,
23 is authorized to fix, assess, and collect fees for the inspection of
24 commodity handlers.

25 (2) For each fiscal year, commencing on July 1, twenty-five
26 percent of the direct and indirect costs of administering and enforcing this
27 ~~article 36~~ PART 2 shall be funded from the general fund. The ~~agricultural~~

1 commission shall establish a fee schedule to cover any direct and indirect
2 costs not funded from the general fund. The inspection fee shall be paid
3 by the person, firm, corporation, or other organization requesting the
4 service at the time it is rendered or as otherwise provided and authorized
5 by the commission.

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

9 **35-36-216. [Formerly 35-36-119] Bonds or irrevocable letters**
10 **of credit - exemptions.** (1) (a) Before any license is issued to ~~any~~ A
11 commodity handler, the applicant shall file with the commissioner a bond
12 executed by the applicant as principal and by a surety company qualified
13 and authorized to do business in this state as a surety or an irrevocable
14 letter of credit meeting the requirements of section 11-35-101.5, in the
15 sum of not less than ten thousand dollars nor more than one million
16 dollars, at the discretion of the commissioner.

17 (b) The bond or irrevocable letter of credit must be conditioned
18 upon compliance with this ~~article 36~~ PART 2 AND SECTION 35-36-104 and
19 upon the faithful and honest handling of commodities in accordance with
20 this ~~article 36~~ PART 2 AND SECTION 35-36-104 and must cover any
21 inspection fees due the department of ~~agriculture~~ by the commodity
22 handler and all costs and reasonable attorney fees incident to any suit
23 upon the bond or irrevocable letter of credit. The bond or irrevocable
24 letter of credit must be to the department of ~~agriculture~~ in favor of every
25 producer or owner and, in the instance of a bond, must remain in full
26 force and effect until cancelled by the surety upon thirty days' prior
27 written notice to the commissioner.

1 (c) (I) ~~Any~~ A producer or owner within the state of Colorado
2 claiming to be injured by the fraud, deceit, or willful negligence of, or
3 failure to comply with this ~~article 36~~ PART 2 AND SECTION 35-36-104 by,
4 ~~any~~ A commodity handler may request the department, as beneficiary, to
5 demand payment on the irrevocable letter of credit or surety bond to
6 recover the damages caused by the fraud, deceit, willful negligence, or
7 failure to comply with this ~~article 36~~ PART 2 AND SECTION 35-36-104.

8 (II) The surety on the bond or the issuer of the letter of credit is
9 not liable to pay any claim pursuant to ~~any~~ AN action brought under this
10 ~~article 36~~ PART 2 if the action is not commenced within one hundred
11 eighty days after the date of the transaction, as that term is ~~defined~~
12 DESCRIBED in ~~section 35-36-116 (13)~~ SECTION 35-36-213 (13), on which
13 the claim is based, or the date of the loss, whichever is later.

14 (d) When ~~any~~ AN action is commenced on ~~said~~ THE bond or
15 irrevocable letter of credit, the commissioner may require the filing of a
16 new bond or irrevocable letter of credit, and the commodity handler's
17 failure to file the new bond or irrevocable letter of credit within ten days
18 after the commencement of ~~said~~ THE action constitutes grounds for the
19 suspension or revocation of ~~his or her~~ THE COMMODITY HANDLER'S
20 license.

21 (e) ~~Any~~ A person licensed pursuant to ~~article 37~~ PART 3 of this
22 ~~title 35~~ ARTICLE 36 may apply for a license as a commodity handler and
23 ~~shall~~ IS not ~~be~~ subject to the license fee required by ~~section 35-36-105~~
24 SECTION 35-36-203. The bond or irrevocable letter of credit required by
25 ~~section 35-37-106~~ shall also apply SECTION 35-36-304 APPLIES to the
26 person's activities as a commodity handler and ~~shall be~~ IS subject to ~~the~~
27 ~~provisions of this section and section 35-36-116~~ SECTION 35-36-213.

1 (2) Whenever the commissioner determines that a previously
2 approved bond or irrevocable letter of credit is or for any cause has
3 become insufficient, the commissioner may require THAT A COMMODITY
4 HANDLER PROVIDE an additional bond or irrevocable letter of credit or
5 other evidence of financial responsibility ~~to be given by a commodity~~
6 ~~handler~~ to conform to the requirements of this ~~article 36~~ PART 2 AND
7 SECTION 35-36-104 or any rule promulgated pursuant to ~~the provisions of~~
8 this article 36 REGARDING COMMODITY HANDLERS. The commodity
9 handler's failure to comply with the commissioner's requirement within
10 thirty days after written demand ~~therefor~~ FOR COMPLIANCE constitutes
11 grounds for the suspension or revocation of ~~his or her~~ THE COMMODITY
12 HANDLER'S license.

13 **35-36-217. [Formerly 35-36-123] Unlawful acts - definition.**

14 (1) It is unlawful and a violation of this ~~article 36~~ PART 2 for ~~any~~ A
15 person to:

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

20 (b) Willfully fail or refuse to render a true account of sales or
21 storage or to make a settlement ~~thereon~~ ON SALES OR STORAGE or to pay
22 for commodities received on the date and in the manner specified in the
23 contract with the owner or, if no date is specified in the contract or on
24 delivery, within thirty days after the date of delivery or the date on which
25 the person took possession of the commodities. Violation of this
26 subsection (1)(b) ~~shall constitute~~ IS a class 6 felony.

27 (c) Intentionally make false or misleading statements as to the

1 market conditions for commodities or false or misleading statements as
2 to the condition, quality, or quantity of commodities received, handled,
3 sold, or stored. Violation of this subsection (1)(c) ~~shall constitute~~ IS a
4 class 6 felony.

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

8 (e) Act as a commodity handler without having obtained a license
9 or act as a commodity handler without having filed a surety bond or
10 irrevocable letter of credit, as provided in this ~~article 36~~ PART 2. Violation
11 of this subsection (1)(e) ~~shall constitute~~ IS a class 6 felony.

12 (f) Willfully convert to ~~his or her~~ THE PERSON'S own use or benefit
13 the commodities of another. Violation of this subsection (1)(f) ~~shall~~
14 ~~constitute~~ IS theft, as defined in section 18-4-401.

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

18 (h) Fail to comply with any lawful order of the commissioner
19 concerning the administration of this ~~article 36~~ PART 2. Violation of this
20 subsection (1)(h) ~~shall constitute~~ IS a class 1 misdemeanor.

21 (i) Interfere with or hinder an authorized representative of the
22 department while performing ~~his or her~~ THE PERSON'S duties under this
23 ~~article 36~~ PART 2. Violation of this subsection (1)(i) ~~shall constitute~~ IS a
24 class 1 misdemeanor.

25 (j) Willfully alter or destroy any negotiable warehouse receipt or
26 the record of the negotiable warehouse receipt; ~~or~~ issue a negotiable
27 warehouse receipt without preserving a record ~~thereof~~ OF THE

1 NEGOTIABLE WAREHOUSE RECEIPT; ~~or~~ issue a negotiable warehouse
2 receipt when the commodity described is not in the building certified in
3 the receipt; ~~or~~, with intent to defraud, issue a second or other negotiable
4 warehouse receipt for any commodity for which, or for any part of which,
5 a valid negotiable warehouse receipt is already outstanding and in force;
6 or, while ~~any~~ A valid negotiable warehouse receipt is outstanding and in
7 force, sell, pledge, mortgage, encumber, or transfer a commodity in
8 violation of ~~the provisions of this article 36 PART 2 OR SECTION 35-36-104~~
9 or permit the same to be done without the written consent of the holder
10 of the negotiable warehouse receipt or receive the property or help to
11 dispose of the ~~same~~ PROPERTY. Violation of this subsection (1)(j) ~~shall~~
12 ~~constitute~~ IS a class 6 felony.

13 (k) Sell commodities for less than the current market price to ~~any~~
14 A person with whom ~~he or she~~ THE PERSON has any financial connection,
15 directly or indirectly, either as an owner of the corporate stock of a
16 corporation, as a copartner, or in any other capacity, or sell any
17 commodities out of the purchase price of which ~~said~~ THE COMMODITY
18 handler, directly or indirectly, retains any portion ~~thereof~~ OF THE
19 PURCHASE PRICE other than the commission allowed and reported
20 pursuant to ~~section 35-37-114~~ SECTION 35-36-310. Violation of this
21 subsection (1)(k) ~~shall constitute~~ CONSTITUTES theft, as defined in section
22 18-4-401.

23 (l) Act as a commodity handler and, with intent to defraud, make,
24 draw, utter, or deliver any check, draft, or order for the payment of money
25 upon ~~any~~ A bank or other depository to the owner for the purchase price
26 of any commodities or any part ~~thereof~~ OF THE PURCHASE PRICE upon
27 obtaining possession or control ~~thereof~~ OF THE COMMODITIES, when, at

1 the time of the making, drawing, uttering, or delivery, the maker or
2 drawer has ~~not sufficient~~ INSUFFICIENT funds in or credit with the bank or
3 other depository for the payment of the check, draft, or order in full upon
4 its presentation. The making, drawing, uttering, or delivery of the check,
5 draft, or order ~~shall be~~ IS prima facie evidence of an intent to defraud.
6 "Credit", as used in this subsection (1)(l), means an arrangement or
7 understanding with the bank or depository for the payment of the check,
8 draft, or order. Violation of this subsection (1)(l) ~~shall constitute~~ IS fraud
9 by check, as defined in section 18-5-205.

10 PART 3

11 FARM PRODUCTS

12 **35-36-301. [Formerly 35-37-102] Legislative declaration.** The
13 general assembly hereby declares that farm products are commodities
14 affected with a public interest and thus should be regulated for the
15 protection of both the producer and the consumer.

16 **35-36-302. [Formerly 35-37-104] Application for license - rules.**
17 (1) ~~No~~ A person shall NOT act as a dealer, small-volume dealer, or agent
18 without having obtained a license as provided in this ~~article 37~~ PART 3.
19 Every person acting as a dealer, small-volume dealer, or agent shall file
20 an application in writing with the commissioner for a license to transact
21 the business of dealer, small-volume dealer, or agent, and the application
22 ~~shall~~ MUST be accompanied by the license fee provided for in ~~section~~
23 ~~35-37-105~~ SECTION 35-36-303 for each specified class of business.

24 (2) The application in each case ~~shall~~ MUST state the class or
25 classes of farm products the applicant proposes to handle; the full name
26 of the person applying for the license; and, if the applicant is a firm,
27 exchange, association, or corporation, the full name of each member of

1 the firm or the names of the officers of the exchange, association, or
2 corporation. The application ~~shall~~ MUST further state the principal
3 business address of the applicant in the state of Colorado and elsewhere
4 and the names of the persons authorized to receive and accept service of
5 summons and legal notices of all kinds for the applicant. The applicant
6 shall further satisfy the commissioner of ~~his or her~~ THE APPLICANT'S
7 character, responsibility, and good faith in seeking to carry on the
8 business stated in the application. In determining a person's character, the
9 commissioner shall ~~be governed by the provisions of~~ COMPLY WITH
10 section 24-5-101.

11 (3) In addition to the general requirements applicable to all classes
12 of applications, as set forth in this section, each application for an agent's
13 license ~~shall~~ MUST include such information as the commissioner may
14 consider proper or necessary, and the application ~~shall~~ MUST include the
15 name and address of the applicant and the name and address of each
16 dealer or small-volume dealer represented or sought to be represented by
17 ~~said~~ THE agent and the written endorsement or nomination of the dealer
18 or small-volume dealer. ~~No~~ A person shall NOT be licensed as an agent
19 unless all of the agent's principals are licensed under this ~~article 37~~ PART
20 3.

21 (4) Upon the applicant's filing of the proper application with the
22 commissioner, accompanied by the proper fee, and when the
23 commissioner is satisfied that the convenience and necessity of the
24 industry and the public will be served ~~thereby~~ BY THE APPLICATION, the
25 commissioner shall issue to the applicant a license entitling the applicant
26 to conduct the business described in the application at the place named in
27 the application until the date specified by the commissioner by rule or

1 until the license has been suspended or revoked. The license of an agent
2 ~~shall expire~~ EXPIRES upon the date of expiration of the license of the
3 principal for whom the agent acts. The commissioner may also issue a
4 license to each agent, with a separate agent's license being required for
5 each principal. ~~Any~~ A dealer, small-volume dealer, or agent shall show
6 the license upon the request of any interested person. Each licensed
7 dealer, small-volume dealer, or agent shall post the person's license or a
8 copy ~~thereof~~ OF THE LICENSE in the person's office or salesroom in plain
9 view of the public.

10 (5) THE COMMISSIONER SHALL REVOKE ANY LICENSE GRANTED AS
11 A RESULT OF fraud or misrepresentation in ~~making any application shall~~
12 ~~ipso facto work a revocation of any license granted pursuant thereto~~
13 APPLYING FOR THE LICENSE. All indicia of the possession of a license ~~shall~~
14 ~~be~~ ARE at all times the property of the state of Colorado, and each licensee
15 is entitled to the possession ~~thereof~~ OF A LICENSE only for the duration of
16 ~~said~~ THE license.

17 (6) Any person licensed under ~~article 36~~ PART 2 of this ~~title 35~~
18 ARTICLE 36 may apply for a license as a dealer or small-volume dealer
19 without paying the license fee otherwise required by ~~section 35-37-105~~
20 SECTION 35-36-303.

21 **35-36-303. [Formerly 35-37-105] License fee - renewal - rules.**

22 (1) (a) For filing the application described in ~~section 35-37-104~~ SECTION
23 35-36-302, each applicant for a license in each of the following categories
24 shall pay to the commissioner a fee as determined by the ~~agricultural~~
25 commission, which fee shall be transmitted to the state treasurer for credit
26 to the inspection and consumer services cash fund created in section
27 35-1-106.5:

1 (I) Dealers; except that a dealer who signs an affidavit stating that
2 the dealer ~~shall~~ WILL make payment in cash or by one of the other means
3 specified in ~~section 35-37-106 (1)(e)~~ SECTION 35-36-304 (1)(e) for each
4 transaction for farm products shall pay the same application fee as a
5 small-volume dealer;

6 (II) Agents; and

7 (III) Small-volume dealers.

8 (b) For each fiscal year, commencing on July 1, twenty-five
9 percent of the direct and indirect costs of administering and enforcing this
10 ~~article 37 shall~~ PART 3 MUST be funded from the general fund. The
11 ~~agricultural~~ commission shall establish a fee schedule to cover any direct
12 and indirect costs not funded from the general fund.

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

18 (3) THE COMMISSIONER SHALL NOT ISSUE A LICENSE TO any person
19 against whose surety a claim has been collected or any person against
20 whom an irrevocable letter of credit has been drawn by the commissioner
21 in accordance with ~~the provisions of this article 37 shall not be licensed~~
22 ~~by the commissioner~~ THIS PART 3 during the period of three years ~~from~~
23 AFTER the date of the collection; except that the commissioner may, in ~~his~~
24 ~~or her~~ THE COMMISSIONER'S discretion and consistent with the purpose of
25 this ~~article 37~~ PART 3, issue a temporary license to the person for the
26 period, subject to such restrictions as the commissioner deems reasonable
27 and necessary.

1 (4) ~~Any~~ THE COMMISSIONER SHALL NOT ISSUE A RENEWAL LICENSE
2 TO A licensee who ~~has~~ IS THE SUBJECT OF a PENDING verified complaint
3 ~~pending against him or her with the commissioner shall not be issued a~~
4 ~~renewal license~~ until the complaint has been settled to the satisfaction of
5 the commissioner.

6 (5) Upon the failure of an applicant to file a bond or an
7 irrevocable letter of credit meeting the requirements of section
8 11-35-101.5, within ninety days ~~of~~ AFTER the date of application, the
9 application will be rendered void, and the license fee will not be
10 refunded. Any subsequent application for a license ~~shall require~~ REQUIRES
11 a new license fee.

12 (6) Whenever the commissioner deems it appropriate, the
13 commissioner may require ~~of any~~ A LICENSEE OR AN applicant for an
14 initial OR RENEWAL license ~~any applicant for a renewal of a license, or any~~
15 ~~licensee the submission of~~ TO SUBMIT a financial statement or an audit
16 prepared by a certified public accountant or any other information to
17 determine whether the person is in an adequate financial position to carry
18 out ~~his or her~~ THE PERSON'S duties as a licensee.

19 **35-36-304. [Formerly 35-37-106] Bonds and irrevocable letters**
20 **of credit - exemptions.** (1) (a) Before ~~any~~ THE COMMISSIONER MAY
21 ISSUE A license ~~is issued~~ to ~~any~~ A dealer, the applicant shall file with the
22 commissioner IN THE SUM OF NOT LESS THAN TWO THOUSAND DOLLARS
23 NOR MORE THAN ONE MILLION DOLLARS, AT THE DISCRETION OF THE
24 COMMISSIONER:

25 (I) A bond executed by the applicant as principal and by a surety
26 company qualified and authorized to do business in this state as a surety;
27 or

1 (II) An irrevocable letter of credit meeting the requirements of
2 section 11-35-101.5. ~~in the sum of not less than two thousand dollars nor~~
3 ~~more than two hundred thousand dollars, at the discretion of the~~
4 ~~commissioner.~~

5 (b) The bond or irrevocable letter of credit must be conditioned
6 upon compliance with this ~~article 37~~ PART 3 AND SECTION 35-36-104 and
7 upon the faithful and honest handling of farm products in accordance with
8 this ~~article 37~~ PART 3 and shall cover any fees due the department of
9 ~~agriculture~~ by the dealer and all costs and reasonable attorney fees
10 incident to any suit upon the bond or irrevocable letter of credit. The bond
11 or irrevocable letter of credit must be to the department of ~~agriculture~~ in
12 favor of every producer, dealer, small-volume dealer, or owner and, in the
13 instance of a bond, must remain in full force and effect until cancelled by
14 the surety upon thirty days' prior written notice to the commissioner.

15 (c) (I) ~~Any~~ A producer, owner, small-volume dealer, or other
16 dealer within the state of Colorado claiming to be injured by the fraud,
17 deceit, or willful negligence of, or failure to comply with this ~~article 37~~
18 PART 3 OR SECTION 35-36-104 by, ~~any~~ A dealer may request the
19 department, ~~of agriculture~~, as beneficiary, to demand payment on the
20 irrevocable letter of credit or surety bond to recover the damages caused
21 by the fraud, deceit, willful negligence, or failure to comply. ~~with this~~
22 ~~article 37.~~

23 (II) The surety on the bond or the issuer of the letter of credit is
24 not liable to pay ~~any~~ A claim pursuant to ~~any~~ AN action brought under this
25 ~~article 37~~ PART 3 if the action is not commenced within one hundred
26 eighty days after the date of the transaction, as that term is ~~defined~~
27 DESCRIBED in ~~section 35-36-116 (13)~~ SECTION 35-36-305 (12), on which

1 the claim is based, or the date of the loss, as that term is defined in section
2 ~~35-36-102 (15)~~ 35-36-102 (20), whichever is later.

3 (d) When ~~any~~ AN action is commenced on ~~said~~ THE bond or
4 irrevocable letter of credit, the commissioner may require ~~the filing of~~
5 THE LICENSEE TO FILE a new bond or irrevocable letter of credit, and
6 failure of the licensee to file the new bond or irrevocable letter of credit
7 within ten days after the commencement of ~~said~~ THE action constitutes
8 grounds for the suspension or revocation of ~~his or her~~ THE LICENSEE'S
9 license.

10 (e) ~~No~~ THE COMMISSIONER SHALL NOT REQUIRE A bond or
11 irrevocable letter of credit ~~shall be required of~~ FROM a dealer who pays
12 for farm products in cash or with a bank-certified check, a bank cashier's
13 check, an irrevocable electronic funds transfer, or a money order at the
14 time the dealer obtains from the owner ~~thereof~~ OF THE FARM PRODUCTS
15 possession or control of the farm products, or of an applicant for a license
16 or a licensee operating under a bond required by the United States to
17 secure the performance of ~~his or her~~ THE APPLICANT'S OR LICENSEE'S
18 obligations; except that the bond ~~shall~~ MUST include all obligations
19 pertaining to Colorado farm products, and THE DEALER SHALL FURNISH
20 documentary evidence ~~shall be furnished~~ to the commissioner that the
21 bond required by the United States is in full force and effect.

22 (f) The bond or irrevocable letter of credit required by ~~section~~
23 ~~35-36-119~~ ~~shall~~ SECTION 35-36-216 MUST apply to the activities as a
24 dealer of ~~any~~ A person licensed pursuant to ~~article 36~~ PART 2 of this title
25 ~~35~~ ARTICLE 36. The persons ~~shall~~ ARE also ~~be~~ subject to ~~the provisions of~~
26 this section and ~~section 35-37-107~~ SECTION 35-36-305.

27 (2) Whenever the commissioner determines that a previously

1 approved bond or irrevocable letter of credit is, or for any cause has
2 become, insufficient, the commissioner may require A DEALER TO
3 FURNISH an additional bond or irrevocable letter of credit or other
4 evidence of financial responsibility ~~to be given by a dealer~~ to conform to
5 the requirements of this ~~article 37~~ PART 3 or any rule promulgated
6 pursuant to ~~the provisions of this article 37~~ ARTICLE 36. The failure of the
7 dealer to comply with the commissioner's requirement within thirty days
8 after written demand ~~therefor~~ FOR COMPLIANCE constitutes grounds for
9 the suspension or revocation of ~~his or her~~ THE DEALER'S license.

10 **35-36-305. [Formerly 35-37-107] Investigations, hearings, and**
11 **examinations.** (1) For the purpose of enforcing ~~the provisions of this~~
12 ~~article 37~~ PART 3, the commissioner may receive complaints from persons
13 against ~~any~~ A dealer, small-volume dealer, agent, or person assuming or
14 attempting to act as ~~such~~ A DEALER, SMALL-VOLUME DEALER, OR AGENT
15 and, upon the receipt of a complaint, may make any and all necessary
16 investigations relative to the complaint.

17 (2) The commissioner upon ~~his or her~~ THE COMMISSIONER'S OWN
18 motion may, and upon the verified complaint of any person shall,
19 investigate any transactions involving ~~any provisions of this article 37~~
20 PART 3.

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

26 (b) The commissioner, upon consent of the licensee or upon
27 obtaining a search warrant, ~~shall have~~ HAS free and unimpeded access to

1 all records required to be kept BY THE LICENSEE and may make copies of
2 the records.

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

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

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

21 (6) If the investigation is against a licensee, the commissioner
22 shall proceed to ascertain the names and addresses of all producers,
23 dealers, small-volume dealers, or owners of farm products, together with
24 the accounts unaccounted for or due and owing to them by the licensee,
25 and shall request all the producers, dealers, small-volume dealers, or
26 owners to file verified statements of their respective claims with the
27 commissioner. If, AFTER THE COMMISSIONER MAKES THE REQUEST FOR

1 VERIFIED STATEMENTS, a producer, dealer, small-volume dealer, or owner
2 ~~so requested~~ fails, refuses, or neglects to file a verified statement in the
3 office of the commissioner within thirty days after the date of the request,
4 the commissioner ~~shall thereupon be~~ IS relieved of any further duty or
5 action under this ~~article 37~~ PART 3 on behalf of ~~said~~ THE producer, dealer,
6 small-volume dealer, or owner.

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

9 (8) (a) If the commissioner determines, after concluding an
10 investigation on ~~any~~ A complaint, that reasonable grounds exist to believe
11 that a licensee has violated ~~any of the provisions of this article 37~~ PART
12 3 OR SECTION 35-36-104, the commissioner shall notify the licensee that
13 the complaint is valid and ~~shall~~ inform the licensee of ~~his or her~~ THE
14 LICENSEE'S opportunity to request a hearing, in writing, on the complaint
15 within ten days after the date of the notice.

16 (b) Upon the receipt of a request for a hearing from a licensee or
17 if the commissioner determines that a hearing concerning ~~any~~ A licensee
18 is necessary, the commissioner shall cause a copy of the complaint or the
19 grounds specified in ~~section 35-37-108~~ SECTION 35-36-306, together with
20 a notice of the time and place of the hearing, to be served personally or
21 by mail upon the licensee. Service shall be made at least ten days before
22 the hearing, which shall be held in the city or town in which the business
23 location of the licensee is situated, or in which the transactions involved
24 allegedly occurred, or at the location deemed by the commissioner to be
25 most convenient.

26 (c) The commissioner shall conduct the hearing pursuant to ~~the~~
27 ~~provisions of~~ section 24-4-105. Thereafter, the commissioner shall enter

1 in ~~his or her~~ THE COMMISSIONER'S office a decision specifying the
2 relevant facts established at the hearing. If the commissioner determines
3 from the facts specified that the licensee has not violated ~~any of the~~
4 ~~provisions of this article 37~~ PART 3 OR SECTION 35-36-104, the
5 COMMISSIONER SHALL DISMISS THE complaint. ~~shall be dismissed.~~ If the
6 commissioner determines from the facts specified that the licensee has
7 violated ~~any of the provisions of this article 37~~ PART 3 OR SECTION
8 35-36-104, and that the licensee has not yet made complete restitution to
9 the person complaining, the commissioner shall determine the amount of
10 damages, if any, to which the person is entitled as the result of the
11 violation and enter an order directing the offender to pay the person
12 complaining the amount OF DAMAGES on or before the date fixed in the
13 order. THE COMMISSIONER SHALL CAUSE TO BE FURNISHED a copy of the
14 decision ~~shall be furnished~~ to all the respective parties to the complaint.

15 (9) As a result of the hearing, the commissioner may also enter
16 ~~any~~ AN order suspending or revoking the license of a licensee or may
17 place the licensee on probation if the commissioner determines that the
18 licensee has committed any of the unlawful acts specified in ~~section~~
19 ~~35-37-118~~ SECTION 35-36-313 or that the licensee has violated ~~any of the~~
20 ~~provisions of this article 37~~ PART 3 OR SECTION 35-36-104.

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

1 (b) ~~In such case~~ IF THE COMMISSIONER ISSUES AN ORDER TO SHOW
2 CAUSE PURSUANT TO SUBSECTION (10)(a) OF THIS SECTION, a copy of the
3 order to show cause, together with a notice of the time and place of the
4 hearing ~~thereupon~~ ON THE ORDER TO SHOW CAUSE, shall be served
5 personally or by mail upon the person involved. Service shall be made at
6 least ten days before the hearing, which shall be held in the city or town
7 in which the business location of the licensee is situated or at any
8 convenient place designated by the commissioner.

9 (c) The commissioner shall conduct the hearing pursuant to ~~the~~
10 ~~provisions of~~ section 24-4-105 and thereafter shall enter in ~~his or her~~ THE
11 COMMISSIONER'S office an order and decision specifying the facts
12 established at the hearing and ~~either~~ dismissing the order to show cause,
13 ~~or~~ directing the suspension or revocation of the license held by the
14 licensee, or making such other conditional or probationary orders as may
15 be proper. THE COMMISSIONER SHALL CAUSE A copy of the order and
16 decision ~~shall~~ TO be furnished to the licensee.

17 (d) Nothing in this section ~~shall be construed as limiting~~ LIMITS
18 the power of the commissioner to revoke or suspend a license when
19 satisfied of the existence of any of the facts specified in ~~section~~
20 ~~35-37-118~~ SECTION 35-36-313.

21 (11) Whenever the absence of records or other circumstances
22 makes it impossible or unreasonable for the commissioner to ascertain the
23 names and addresses of all persons specified in subsection (6) of this
24 section, the commissioner, after exercising due diligence and making a
25 reasonable inquiry to secure ~~said~~ THE information from all reasonable and
26 available sources, ~~shall~~ IS not be liable or responsible for the claims or the
27 handling of claims that may subsequently appear or be discovered. After

1 ascertaining all claims, assessments, and statements in the manner set
2 forth in subsection (6) of this section, the commissioner may then demand
3 payment on the bond or irrevocable letter of credit on behalf of those
4 claimants whose claims have been determined by the commissioner as
5 valid and, in the instance of a bond, may settle or compromise the claims
6 with the surety company on the bond and execute and deliver a release
7 and discharge of the bond involved. Upon the refusal of the surety
8 company to pay the demand, the commissioner may bring an action on the
9 bond on behalf of the producer, dealer, small-volume dealer, or owner.

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

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

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

17 (13) ~~THE COMMISSIONER HAS DISCRETION TO CLOSE FROM PUBLIC~~
18 ~~INSPECTION~~ complaints of record made to the commissioner and the
19 results of ~~his or her~~ THE COMMISSIONER'S investigations ~~may, in the~~
20 ~~discretion of the commissioner, be closed to public inspection~~ during the
21 investigatory period and until dismissed or until notice of hearing and
22 charges is served on a licensee, unless otherwise provided by court order.

23 **35-36-306. [Formerly 35-37-108] Disciplinary powers - licenses.**

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

1 (a) Violated ~~any of the provisions of this article 37~~ PART 3 OR
2 SECTION 35-36-104 or violated any of the rules promulgated by the
3 commissioner pursuant to this ~~article 37~~ ARTICLE 36;

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

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

10 (d) Failed or refused to file with the commissioner a surety bond
11 or an irrevocable letter of credit, as required by ~~section 35-37-106~~
12 SECTION 35-36-304;

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

15 (f) Failed to comply with ~~any~~ A lawful order of the commissioner
16 concerning the administration of this ~~article 37~~ PART 3; OR

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

20 (2) All proceedings concerning the denial, refusal to renew,
21 revocation, or suspension of a license or the placing of a licensee on
22 probation shall be conducted pursuant to ~~the provisions of section~~
23 ~~35-37-107~~ SECTION 35-36-305 and article 4 of title 24.

24 (3) ~~Any~~ A previous violation of ~~the provisions of this article 37~~
25 PART 3 OR SECTION 35-36-104 by the applicant or any person connected
26 with the applicant in the business for which the applicant seeks to be
27 licensed, or, in the case of a partnership or corporation applicant, any

1 previous violations of ~~the provisions of this article 37~~ THIS PART 3 OR
2 SECTION 35-36-104 by a partner, officer, director, or stockholder of more
3 than thirty percent of the outstanding shares, is sufficient grounds for the
4 denial of a license.

5 **35-36-307. [Formerly 35-37-111] Credit sale contracts - rules.**

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

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

13 (b) The charges for handling, if any;

14 (c) The name and address of the producer or owner and the
15 signature of the dealer or small-volume dealer or the authorized agent
16 ~~thereof~~ OF THE DEALER OR SMALL-VOLUME DEALER;

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

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

24 (2) A DEALER OR SMALL-VOLUME DEALER SHALL RETAIN records
25 of a dealer or small-volume dealer ~~shall be retained~~ for a period of two
26 years, and ~~shall~~ THE RECORDS MUST reflect those credit sale contracts that
27 have been cancelled and those that are still open. The DEALER OR

1 SMALL-VOLUME DEALER SHALL KEEP THE records ~~shall be kept~~ at the
2 dealer's or small-volume dealer's place of business at all times.

3 (3) THE COMMISSIONER MAY REQUIRE an annual report of the
4 status of all of a dealer's or small-volume dealer's credit sale contracts.
5 ~~may be required by the commissioner.~~

6 (4) A DEALER OR SMALL-VOLUME DEALER SHALL CONSECUTIVELY
7 NUMBER all credit sale contracts entered into by a THE dealer or
8 small-volume dealer ~~shall be consecutively numbered by the dealer,~~ and
9 MAKE copies ~~thereof shall be made~~ OF THE CREDIT SALE CONTRACTS
10 available for inspection by the commissioner or the commissioner's
11 authorized agents.

12 **35-36-308. [Formerly 35-37-112] Records of dealers.** (1) Every
13 dealer handling farm products for ~~any~~ A consignor having received any
14 farm products on commission for sale shall promptly make and keep a
15 correct record, showing in detail the following with reference to the
16 handling, sale, or storage of the farm products:

- 17 (a) The name and address of the consignor;
- 18 (b) The date received;
- 19 (c) The condition and quantity upon arrival;
- 20 (d) The date of the sale for the account of the consignor;
- 21 (e) The price for which sold;
- 22 (f) An itemized statement of the charges to be paid by the
23 consignor in connection with the sale;

24 (g) The names and addresses of the purchasers if the dealer has
25 ~~any~~ A financial interest in the business of the purchasers or if the
26 purchasers have ~~any~~ A financial interest in the business of the dealer,
27 directly or indirectly, as a holder of the other's corporate stock, as a

1 copartner, as a lender or borrower of money to or from the other, or in any
2 other capacity;

3 (h) A lot number or other identifying mark for each consignment,
4 which number or mark ~~shall~~ MUST appear on all sales tags or other
5 essential records needed to show what the product actually sold for; AND

6 (i) Any claims that have been or may be filed by the dealer against
7 any person for overcharges or for damages resulting from the injury or
8 deterioration of the farm products by the act, neglect, or failure of the
9 person. ~~and THE DEALER SHALL MAKE the records shall be open to the~~
10 AVAILABLE FOR inspection ~~of~~ BY the commissioner and the consignor for
11 whom the claims are made.

12 **35-36-309. [Formerly 35-37-113] Records of small-volume**
13 **dealers.** Each small-volume dealer shall maintain records of all aspects
14 of each purchase of farm products in the form and manner required by the
15 commissioner.

16 **35-36-310. [Formerly 35-37-114] Daily reports and settlements.**

17 (1) When requested by ~~his or her~~ A DEALER'S consignor, ~~a~~ THE dealer,
18 before the close of the next business day following the sale of any farm
19 products consigned to the dealer, shall transmit or deliver to the owner or
20 consignor a true written report of the sale, showing the amount sold and
21 the selling price. THE DEALER SHALL MAKE remittance in full TO THE
22 CONSIGNER of the amount realized from the sale, including all collections,
23 overcharges, and damages, less the agreed commission and other charges
24 together with a complete account of sales ~~shall be made to the consignor~~
25 within ten days after the receipt of the money by the dealer unless
26 otherwise agreed to in writing. In the account, the names and addresses
27 of purchasers need not be given, except as required in ~~section 35-37-112~~

1 SECTION 35-36-308.

2 (2) Every dealer shall retain a copy of the record covering each
3 consignment transaction for a period of one year after the date ~~thereof~~ OF
4 THE CONSIGNMENT TRANSACTION, which copy THE DEALER shall, at all
5 times, ~~be~~ MAKE available for, and open to, ~~the~~ inspection ~~of~~ BY the
6 commissioner and the consignor or the authorized representative of either.

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

12 **35-36-311. [Formerly 35-37-115] Pooled consignment.** Local
13 produce or fruit associations or other shippers located in the
14 neighborhood where FARM products are grown may receive a reasonable
15 compensation for loading, shipping, and securing persons to handle the
16 ~~same~~ PRODUCTS on commission in markets away from the locality where
17 grown. Dealers receiving consignments of farm products from a number
18 of consignors under written agreements or under written authority from
19 them to market the products in season and prorate the net proceeds of the
20 consignments among all consignors or to market the same in connection
21 with other products of the same class may withhold the proportion of the
22 net returns of sales of the consignments as may be necessary to carry out
23 the agreements pertaining to the consignments until final sales have been
24 made. In every case, final settlement shall be made within fifteen days
25 after the final sale of the consignment, unless otherwise agreed to in
26 writing by the consignor.

27 **35-36-312. [Formerly 35-37-116] Enforcement.** ~~(1) —~~The

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

8 (2) Whenever, upon sufficient evidence satisfactory to the
9 commissioner, the commissioner determines a person has engaged in or
10 is about to engage in ~~any~~ AN act or practice constituting a violation of ~~any~~
11 ~~provision of this article 37~~ THIS PART 3 or of any rule or ~~of any~~ order
12 promulgated under this ~~article 37~~ ARTICLE 36, the commissioner may
13 apply to a court of competent jurisdiction to temporarily or permanently
14 restrain or enjoin the act or practice in question and to enforce compliance
15 with this ~~article 37~~ PART 3 or any rule or order pursuant to this ~~article 37~~
16 ARTICLE 36. In the action, the commissioner ~~shall~~ NEED not ~~be required~~
17 ~~to~~ plead or prove irreparable injury or the inadequacy of a remedy at law.
18 Under no circumstances shall the court require the commissioner to post
19 a bond.

20 **35-36-313. [Formerly 35-37-118] Unlawful acts - definition.**

21 (1) It is unlawful and a violation of this ~~article 37~~ PART 3 for any person
22 to:

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

27 (b) Willfully fail or refuse to render a true account of sales or

1 storage or to make a settlement ~~thereon~~ ON SALES OR STORAGE or to pay
2 for farm products received within the time and in the manner required by
3 this ~~article 37~~ PART 3. Violation of this subsection (1)(b) ~~shall constitute~~
4 IS a class 6 felony.

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

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

13 (e) Act as a dealer, small-volume dealer, or agent without having
14 obtained a license or act as a dealer without having filed a surety bond or
15 an irrevocable letter of credit, as provided in this ~~article 37~~ PART 3.
16 Violation of this subsection (1)(e) ~~shall constitute~~ IS a class 6 felony.

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

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

23 (h) Fail to comply with ~~any~~ A lawful order of the commissioner
24 concerning the administration of this ~~article 37~~ PART 3. Violation of this
25 subsection (1)(h) ~~shall constitute~~ IS a class 1 misdemeanor.

26 (i) Interfere with or hinder an authorized representative of the
27 commissioner while performing ~~his or her~~ THE AUTHORIZED

1 REPRESENTATIVE'S duties under this ~~article 37~~ PART 3. Violation of this
2 subsection (1)(i) ~~shall constitute~~ IS a class 1 misdemeanor.

3 (j) If licensed as a dealer or small-volume dealer, sell farm
4 products for less than the current market price to any person with whom
5 the dealer has ~~any~~ A financial connection, directly or indirectly, either as
6 an owner of the corporate stock of a corporation, as a copartner, or in any
7 other capacity, or sell any farm products out of the purchase price of
8 which ~~said~~ THE dealer or small-volume dealer receives, directly or
9 indirectly, ~~any~~ A portion ~~thereof~~ OF THE PURCHASE PRICE other than the
10 commission allowed in ~~section 35-37-114~~ SECTION 35-36-310. Violation
11 of this subsection (1)(j) ~~shall constitute~~ IS theft, as defined in section
12 18-4-401.

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

27 (l) If acting as a dealer who has signed an affidavit in accordance

1 with ~~section 35-37-105 (1)(a)(f)~~ SECTION 35-36-303 (1)(a)(I), fail to make
2 payment in cash or by one of the other means specified in ~~section~~
3 ~~35-37-106 (1)(e)~~ SECTION 35-36-304 (1)(c) for any transaction without
4 first complying with the bonding requirements of ~~section 35-37-106~~
5 SECTION 35-36-304. Violation of this subsection (1)(l) ~~shall constitute~~ IS
6 a class 1 misdemeanor.

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

13 **35-36-314. [Formerly 35-37-121] Penalties for theft of farm**
14 **products.** (1) If farm products are contracted for sale to an out-of-state
15 purchaser, the purchaser ~~shall be~~ IS subject to the jurisdiction of the courts
16 of this state in accordance with ~~the provisions of~~ section 13-1-124 (1)(a).
17 The seller ~~shall be~~ IS entitled to all remedies at law in seeking the return
18 of the farm products when the purchaser takes delivery of the products
19 but is unable or refuses to make payment for ~~said~~ THE products and the
20 products have been physically removed to another state. The COURT
21 SHALL GIVE THE action ~~shall be given~~ priority on the court's docket.

22 (2) If ~~any~~ A person purchases farm products in this state and
23 removes the products to another state and issues a check in payment for
24 those products knowing there are insufficient funds, as defined in section
25 18-5-205 (1)(d), to pay for ~~said~~ THE products, the person commits theft
26 of farm products and shall be punished as provided in section 18-4-401
27 (2).

1 **SECTION 3. Repeal of relocated and nonrelocated provisions**
2 **in this act.** In Colorado Revised Statutes, **repeal** article 37 of title 35;
3 except that 35-37-101; 35-37-103 (2), (3), (4), (6), (8.5), (9), (10), (11),
4 (12), and (13); 35-37-109; 35-37-110; 35-37-117; 35-37-119; 35-37-120;
5 and 35-37-122 are not relocated.

6 **SECTION 4.** In Colorado Revised Statutes, 11-35-101.5, **amend**
7 (1) as follows:

8 **11-35-101.5. Irrevocable letter of credit permitted -**
9 **requirements.** (1) Where there is the requirement of either an
10 irrevocable letter of credit or a bond as a condition to licensure in ~~sections~~
11 ~~35-36-119 (1) and 35-37-106 (1)~~ **SECTIONS 35-36-216 AND 35-36-304** or
12 where an irrevocable letter of credit is permitted as an alternative to a
13 surety bond, evidence of a savings account, deposit, or certificate of
14 deposit meeting the requirements of section 11-35-101, as a condition to
15 licensure or authority to conduct business or perform duties in this state,
16 provided in sections 33-4-101 (1), 33-12-104 (1), ~~35-36-119 (1)(a),~~
17 ~~35-37-105 (5), 35-37-106 (1)(a)~~ **35-36-216 (1)(a), 35-36-303 (5),**
18 **35-36-304 (1)(a),** 37-91-107 (2), and 39-27-104 (2.1)(c), the requirement
19 shall be satisfied by an irrevocable letter of credit issued by a state or
20 national bank or a state or federal savings and loan association doing
21 business in this state. The requirement shall also be satisfied by an
22 irrevocable letter of credit issued by the bank or banks for cooperatives
23 that are organized pursuant to federal statutes and that serve the region in
24 which the state of Colorado is located. Such letter of credit shall be in an
25 amount specified by statute, if any, and shall name the appropriate state
26 agency as beneficiary, in favor of the people of the state of Colorado.

27 **SECTION 5.** In Colorado Revised Statutes, **amend** 16-2.5-118

1 as follows:

2 **16-2.5-118. Commissioner of agriculture.** The commissioner of
3 agriculture or his or her designee is a peace officer while engaged in the
4 performance of his or her duties whose authority shall be limited pursuant
5 to the "~~Farm Products Act~~", ~~section 35-37-116~~, the "~~Commodity Handler~~
6 ~~Act~~", ~~section 35-36-111~~, SECTIONS 35-36-103 AND 35-36-312 OF THE
7 "COMMODITY HANDLER AND FARM PRODUCTS ACT"; the "Animal
8 Protection Act", section 35-42-107 (4); and the "Pet Animal Care and
9 Facilities Act", section 35-80-109 (6).

10 **SECTION 6.** In Colorado Revised Statutes, 18-1-202, **amend**
11 (7)(b)(II) introductory portion and (7)(b)(II)(R) as follows:

12 **18-1-202. Place of trial - applicability.** (7) (b) (II) The
13 provisions of subsection (7)(b)(I) of this section ~~shall~~ apply to the
14 following offenses:

15 (R) Theft of farm products, as ~~defined in section 35-37-121~~
16 DESCRIBED IN SECTION 35-36-313;

17 **SECTION 7.** In Colorado Revised Statutes, 35-1-104, **amend** (4)
18 as follows:

19 **35-1-104. Functions, powers, and duties - rules.** (4) To the
20 extent its costs are repaid by gifts, grants, or donations received pursuant
21 to section 35-1-107 (6), and only to that extent, the department may
22 provide educational programs and materials regarding any activity
23 regulated under articles 12, 13, 14, 21, 33, 36, ~~37~~, and 60 of this title 35.

24 **SECTION 8.** In Colorado Revised Statutes, 35-1-106, **amend**
25 (1)(p)(I) as follows:

26 **35-1-106. Powers and duties of commission.** (1) In addition to
27 all other powers and duties conferred upon the commission by this article

1 1, the commission has the following specific powers and duties:

2 (p) (I) In consultation with interested industry groups, to fix,
3 assess, and collect fees in amounts sufficient to recover the department's
4 direct and indirect costs incurred in carrying out and enforcing the
5 provisions of articles 12, 13, 14, 21, 33, 36, ~~37~~, and 60 of this title 35 and
6 part 2 of article 43 of this title 35.

7 **SECTION 9.** In Colorado Revised Statutes, 35-1-106.5, **amend**
8 (1) as follows:

9 **35-1-106.5. Inspection and consumer services cash fund -**
10 **creation.** (1) All fees, fines, and penalties collected pursuant to articles
11 12, 13, 14, 21, 33, 36, ~~37~~, and 60 of this title 35 and part 2 of article 43
12 of this title 35 shall be transmitted to the state treasurer, who shall credit
13 the same to the inspection and consumer services cash fund, which fund
14 is hereby created in the state treasury. All interest derived from the
15 deposit and investment of money in the fund shall be credited to the fund.
16 At the end of any fiscal year, all unexpended and unencumbered money
17 in the fund shall remain in the fund and shall not be credited or
18 transferred to the general fund or any other fund or used for any purpose
19 other than to offset the costs of implementing, administering, and
20 enforcing the provisions of articles 12, 13, 14, 21, 33, 36, ~~37~~, and 60 of
21 this title 35 and part 2 of article 43 of this title 35. Money in the fund is
22 subject to annual appropriation to the department for such purposes.

23 **SECTION 10.** In Colorado Revised Statutes, 35-1-107, **amend**
24 (5) introductory portion as follows:

25 **35-1-107. Commissioner of agriculture - report - publications**
26 **- deputy commissioner - rules.** (5) The commissioner is authorized to
27 adopt all reasonable rules for the implementation of articles 12, 13, 14,

1 21, 33, 36, ~~37~~, and 60 of this title 35 and part 2 of article 43 of this title
2 35. Such rules may include, but are not limited to:

3 **SECTION 11.** In Colorado Revised Statutes, 35-61-108, **amend**
4 (4) as follows:

5 **35-61-108. Exportation of industrial hemp - processing, sale,**
6 **manufacturing, and distribution - rules.** (4) (a) Because the
7 unprocessed seeds of industrial hemp are included in the definition of
8 "commodity" pursuant to section 35-36-102 ~~(5)~~ (7) of the "Commodity
9 Handler AND FARM PRODUCTS Act", PART 1 OF article 36 of this title 35,
10 a person acting as a commodity handler, as that term is defined in section
11 35-36-102 ~~(6)~~ (8), with respect to the unprocessed seeds of industrial
12 hemp, shall comply with the licensing requirements set forth in PART 2 OF
13 article 36 of this title 35 and any rules promulgated pursuant to ~~that article~~
14 ARTICLE 36.

15 (b) Because industrial hemp is included in the definition of "farm
16 products" pursuant to ~~section 35-37-103 (8)~~ SECTION 35-36-102 (14) of
17 the "COMMODITY HANDLER AND Farm Products Act", ~~article 37~~ ARTICLE
18 36 of this title 35, a person acting as a dealer, small-volume dealer, or
19 agent, as those terms are defined in ~~section 35-37-103~~ SECTION
20 35-36-102, with respect to industrial hemp, shall comply with the
21 licensing requirements set forth in ~~article 37~~ PART 3 OF ARTICLE 36 of this
22 title 35 and any rules promulgated pursuant to ~~that article~~ ARTICLE 36.

23 **SECTION 12. Safety clause.** The general assembly hereby finds,
24 determines, and declares that this act is necessary for the immediate
25 preservation of the public peace, health, or safety.