

Second Regular Session  
Seventy-second General Assembly  
STATE OF COLORADO

**REENGROSSED**

*This Version Includes All Amendments  
Adopted in the House of Introduction*

LLS NO. 20-0521.01 Jennifer Berman x3286

**HOUSE BILL 20-1213**

**HOUSE SPONSORSHIP**

**Young and Pelton**, Catlin, Holtorf, Valdez D., Will, Arndt, Becker, Bockenfeld, Buentello, Herod, Liston, Lontine, McLachlan, Roberts, Soper

**SENATE SPONSORSHIP**

**Rodriguez and Sonnenberg**,

**House Committees**

Rural Affairs & Agriculture  
Finance  
Appropriations

**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.*

HOUSE  
3rd Reading Unamended  
June 9, 2020

HOUSE  
Amended 2nd Reading  
June 8, 2020

**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** (26)(a)(IX) 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

11 (26) (a) The following agencies, functions, or both, are scheduled  
12 for repeal on September 1, 2025:

1 (IX) THE LICENSING AND REGULATION OF PERSONS BY THE  
2 DEPARTMENT OF AGRICULTURE IN ACCORDANCE WITH ARTICLE 36 OF TITLE  
3 35.

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

6 ARTICLE 36

7 Commodities Handlers and Farm Products

8 PART 1

9 COMMON PROVISIONS

10 35-36-101. [Formerly 35-36-101 and similar to  
11 35-37-101] **Short title.** The short title of this article 36 is the  
12 "Commodity Handler AND FARM PRODUCTS Act".

13 35-36-102. [Formerly 35-36-102 except as noted  
14 otherwise] **Definitions - rules.** As used in this article 36, unless the  
15 context otherwise requires:

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

22 ~~(1)~~ (2) "Bailee" means a person who, by a negotiable warehouse  
23 receipt or other document of title, acknowledges possession of goods and  
24 contracts to deliver them.

25 ~~(2)~~ (3) "Bailment" means the act of delivering goods or personal  
26 property to another in trust.

27 ~~(3)~~ (4) "Commercial feeding" means the feeding of livestock by

1 a person who receives compensation from the owner of the livestock for  
2 the feeding.

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

5 ~~(4)~~ (6) "Commissioner" means the commissioner of agriculture or  
6 ~~his or her~~ THE COMMISSIONER'S designee.

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

11 ~~(6)~~ (8) (a) "Commodity handler" means A PERSON:

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

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

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

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

25 (V) ~~Any person~~ Engaged in buying any commodity from the  
26 owner ~~thereof~~ OF THE COMMODITY for the commercial feeding of  
27 livestock that are owned wholly or in part by another, at an animal

1 feeding operation with a capacity of more than two thousand five hundred  
2 head of livestock. ~~The commissioner shall establish rules to determine the~~  
3 ~~capacity of animal feeding operations for purposes of this article 36.~~

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

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

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

13 ~~(7)~~ (9) "Compensation" means something of value or benefit,  
14 whether in cash, in kind, or in any other form.

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

18 ~~(8)~~ (11) "Credit sale contract" means a contract for the sale of a  
19 commodity OR A FARM PRODUCT when the sale price is to be paid on a  
20 date later than thirty days after delivery of the commodity OR FARM  
21 PRODUCT to the buyer and includes those contracts commonly referred to  
22 as deferred payment contracts, deferred pricing contracts, and price later  
23 contracts.

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

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

27 (II) ~~Any person~~ Engaged in receiving and taking possession of any

1 farm products from the owner for storage or safekeeping;

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

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

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

18 (b) "Dealer" does not include:

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

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

27 ~~(9)~~ (13) "Department" means the department of agriculture.

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

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

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

9 (C) Milk; and

10 (D) Honey.

11 (II) "Farm products" also includes:

12 (A) Ensiled corn;

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

14 (C) Industrial hemp.

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

17 ~~(10)~~ (15) "Financial statement" means a statement PREPARED  
18 ACCORDING TO GENERALLY ACCEPTED ACCOUNTING PRINCIPLES that  
19 accurately presents the financial condition of an applicant or licensee and  
20 that includes, at a minimum, a balance sheet and a statement of income.

21 ~~(11)~~ (16) "Forwarded commodities" means commodities sent to  
22 a terminal warehouse and put on open storage in the name of the  
23 forwarding warehouse operator.

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

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

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

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

5           ~~(13)~~ (17) "Handling" means buying commodities for resale or  
6 processing, brokering commodities, or receiving and loading out  
7 commodities tendered for storage.

8           ~~(13.5)~~ (18) "Industrial hemp" has the meaning set forth in section  
9 35-61-101 (7).

10          ~~(14)~~ (19) "Livestock" has the ~~same~~ meaning as set forth in section  
11 35-1-102 (6).

12          ~~(15)~~ (20) "Loss" means any monetary loss to a producer or owner  
13 that is of an extraordinary nature and that includes but is not limited to,  
14 bankruptcy, embezzlement, theft, fraud, or negligence.

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

18          ~~(16)~~ (22) "Market value" means the value required by law to be  
19 used by insurance underwriters in paying for losses of commodities  
20 insured for their actual value.

21          ~~(17)~~ (23) "Negotiable warehouse receipt" means a receipt that  
22 specifies by its terms that the goods are to be delivered to the bearer or to  
23 the order of a named person. Any other receipt is nonnegotiable.

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

27          ~~(19)~~ (25) "Person" includes:



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

3 (b) The commissioner.

4 ~~(20)~~ (26) "Processing" means the operation of canning, DRYING,  
5 fermenting, distilling, extracting, preserving, grinding, crushing, flaking,  
6 mixing, or otherwise changing the form of a commodity OR FARM  
7 PRODUCT for the purpose of selling OR RESELLING any of the resulting  
8 products.

9 ~~(21)~~ (27) "Producer" means ~~any grower of~~ A PERSON ENGAGED IN  
10 GROWING commodities OR FARM PRODUCTS OR PRODUCING FARM  
11 PRODUCTS.

12 ~~(22)~~ (28) "Provisional insurance coverage" means a certificate or  
13 any other satisfactory evidence of fire and extended coverage insurance  
14 issued by an insurance company authorized to do business in this state  
15 insuring every commodity in the custody of a warehouse operator,  
16 whether held for others or owned by the warehouse operator, at the full  
17 local market value of each commodity.

18 ~~(23)~~ (29) "Public warehouse" includes ~~any~~ AN elevator, mill,  
19 warehouse, or other structure in which commodities are received from  
20 one or more members of the public for storage.

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

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

27 ~~(25)~~ (32) "Settlement sheet" means a summary of ~~the~~ A

1 commodity handler's OR SMALL-VOLUME COMMODITY HANDLER'S  
2 transactions with an owner.

3 (33) "SMALL-VOLUME COMMODITY HANDLER" MEANS A PERSON  
4 WHO:

5 (a) HAS A FIXED OR ESTABLISHED PLACE OF BUSINESS IN THIS  
6 STATE;

7 (b) ENGAGES IN COMMODITIES HANDLING;

8 (c) BUYS LESS THAN TWO HUNDRED FIFTY THOUSAND DOLLARS'  
9 WORTH OF COMMODITIES AND FARM PRODUCTS PER YEAR FROM OWNERS  
10 FOR PROCESSING OR RESALE; AND

11 (d) DOES NOT PURCHASE COMMODITIES FOR COMMERCIAL FEEDING  
12 OF LIVESTOCK.

13 (34) [Formerly 35-37-103 (15)] "Small-volume dealer" means any  
14 A person who:

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

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

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

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

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

26 ~~(26)~~ (35) "Storage" means the holding of a commodity OR FARM  
27 PRODUCT for another by a person who does not directly own the

1 commodity OR FARM PRODUCT. "Storage" does not include transportation  
2 of a commodity OR FARM PRODUCT.

3 (27) (36) "Terminal warehouse" means ~~any~~ A public warehouse  
4 licensed by the ~~Colorado~~ department, ~~of agriculture~~, the United States  
5 department of agriculture, or any state that has a warehouse examination  
6 cooperative agreement with Colorado or the United States department of  
7 agriculture.

8 (28) (37) "Warehouse operator" includes ~~any~~ A person ~~or existing~~  
9 ~~legal entity~~ owning, operating, or controlling ~~any~~ A public warehouse.

10 **35-36-103. [Formerly 35-36-111 and similar to 35-37-116 (1)**  
11 **and 35-37-120] Commissioner - rules - delegation of powers and**  
12 **duties - repeal.** (1) (a) The commissioner ~~may~~ SHALL promulgate ~~such~~  
13 ~~rules in~~ accordance with article 4 of title 24 as are necessary for the  
14 ~~administration of this article 36. ON OR BEFORE DECEMBER 31, 2020, THE~~  
15 ~~COMMISSIONER MUST PROMULGATE RULES THAT~~ INCLUDE RULES  
16 REGARDING:

17 (I) FINANCIAL ASSURANCE REQUIREMENTS, INCLUDING A  
18 SCHEDULE FOR APPLICANTS TO FILE A BOND WITH THE COMMISSIONER;

19 (II) REQUIREMENTS FOR MAINTAINING RECORDS;

20 (III) INITIAL AND RENEWAL LICENSE REQUIREMENTS;

21 (IV) REQUIREMENTS FOR CREDIT SALE CONTRACTS;

22 (V) REQUIREMENTS FOR WAREHOUSE OPERATIONS; AND

23 (VI) THE CAPACITY OF ANIMAL FEEDING OPERATIONS FOR  
24 PURPOSES OF THIS ARTICLE 36.

25 (b) (I) ~~BEFORE THE COMMISSIONER PROMULGATES THE RULES~~  
26 ~~LISTED IN SUBSECTION (1)(a) OF THIS SECTION, THE DEPARTMENT SHALL~~  
27 ~~CONVENE A STAKEHOLDERS' GROUP AS SOON AS PRACTICABLE TO WORK~~

1 ON DRAFTING THE RULES. THE STAKEHOLDERS' GROUP MUST INCLUDE:

2 (A) ONE OR MORE COMMODITY HANDLERS WHO PURCHASE LESS  
3 THAN TWO HUNDRED FIFTY THOUSAND DOLLARS WORTH OF COMMODITIES  
4 AND FARM PRODUCTS EACH YEAR;

5 (B) ONE OR MORE COMMODITY HANDLERS WHO PURCHASE TWO  
6 HUNDRED FIFTY THOUSAND DOLLARS WORTH OR MORE OF COMMODITIES  
7 AND FARM PRODUCTS EACH YEAR;

8 (C) ONE OR MORE SMALL-VOLUME DEALERS;

9 (D) ONE OR MORE DEALERS;

10 (E) ONE OR MORE AGRICULTURAL TRADE ASSOCIATIONS  
11 REPRESENTED IN THE STATE; AND

12 (F) ANY OTHER PERSON THAT THE COMMISSIONER DEEMS  
13 NECESSARY TO INCLUDE.

14 (II) THIS SUBSECTION (1)(b) IS REPEALED, EFFECTIVE SEPTEMBER  
15 1, 2021.

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

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

27 **35-36-104. [Formerly 35-36-120 and similar to**

1 **35-37-109] Cease-and-desist order - restraining order.** (1) If the  
2 commissioner determines that there exists a violation of ~~any provision of~~  
3 this article 36 or of any rule promulgated under the authority of this  
4 article 36, the commissioner may issue a cease-and-desist order, which  
5 may require ~~any~~ A person to cease functioning as a commodity handler,  
6 ~~SMALL-VOLUME COMMODITY HANDLER, DEALER, SMALL-VOLUME DEALER,~~  
7 ~~OR AGENT~~ except for those functions necessary to prevent spoilage of  
8 products stored in ~~his or her~~ THE PERSON'S public warehouse OR A  
9 DEALER'S ~~WAREHOUSE OR FOR THE CONTINUED COMMERCIAL FEEDING OF~~  
10 ~~LIVESTOCK.~~ The order ~~shall~~ MUST set forth the provision alleged to have  
11 been violated, the facts alleged to have constituted the violation, and the  
12 requirement that all ~~functions, except those necessary to prevent spoilage~~  
13 ~~be ceased forthwith~~ OR FOR THE CONTINUED COMMERCIAL FEEDING OF  
14 ~~LIVESTOCK,~~ CEASE IMMEDIATELY. At any time after the date of the service  
15 of the order to cease and desist, the person may request a hearing on the  
16 question of whether ~~or not~~ the violation has occurred. The hearing shall  
17 be concluded in not more than ten days after the request and shall be  
18 conducted pursuant to ~~the provisions of~~ article 4 of title 24.

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

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

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

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

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

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

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

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

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

1           **35-36-106. [Formerly 35-36-124 and similar to**  
2 **35-37-119] Penalties.** (1) ~~Any~~ A person who violates ~~any of the~~  
3 ~~provisions of section 35-36-123 (1)(a), (1)(b), (1)(c), (1)(d), (1)(e), or~~  
4 ~~(1)(j)~~ SECTION 35-36-217 (1)(a) TO (1)(e) OR (1)(j) OR SECTION 35-36-313  
5 (1)(a) TO (1)(e) commits a class 6 felony and shall be punished as  
6 provided in section 18-1.3-401. ~~Any~~ A person who violates ~~any of the~~  
7 ~~provisions of section 35-36-123 (1)(f)~~ SECTION 35-36-217 (1)(f) OR  
8 35-36-313 (1)(f) OR (1)(j) commits theft, as defined in section 18-4-401.  
9 ~~Any~~ A PERSON WHO VIOLATES SECTION 35-36-217 (1)(l) OR 35-36-313  
10 (1)(k) COMMITS FRAUD BY CHECK, AS DEFINED IN SECTION 18-5-205. A  
11 person who violates ~~any of the provisions of section 35-36-123 (1)(g),~~  
12 ~~(1)(h), or (1)(i)~~ SECTION 35-36-217 (1)(g) TO (1)(i) commits a class 1  
13 misdemeanor and shall be punished as provided in section 18-1.3-501.

14           (2) ~~Any~~ A person who violates any other provision of this article  
15 36 commits a class 1 misdemeanor and shall be punished as provided in  
16 section 18-1.3-501.

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

1 prosecute the violation.

2 **35-36-107. [Formerly 35-36-122 and similar to**  
3 **35-37-110] Appeal.** Any action of the commissioner with reference to the  
4 administration of this article 36 may be reviewed by any court of  
5 competent jurisdiction pursuant to ~~the provisions of~~ section 24-4-106 only  
6 after all administrative remedies have been exhausted.

7 **35-36-108. Report - repeal.** (1) ON OR BEFORE NOVEMBER 1,  
8 2021, THE DEPARTMENT SHALL SUBMIT A WRITTEN REPORT TO THE  
9 AGRICULTURE AND NATURAL RESOURCES COMMITTEE IN THE SENATE AND  
10 THE RURAL AFFAIRS AND AGRICULTURE COMMITTEE IN THE HOUSE OF  
11 REPRESENTATIVES, OR THEIR SUCCESSOR COMMITTEES, SUMMARIZING THE  
12 DEPARTMENT'S PROGRESS IN IMPLEMENTING THIS ARTICLE 36. THE REPORT  
13 MUST INCLUDE:

14 (a) A SUMMARY OF THE DEPARTMENT'S PROGRESS REGARDING  
15 CHANGES MADE TO THE REGULATORY PROGRAM AUTHORIZED IN THIS  
16 ARTICLE 36 AFTER THE EFFECTIVE DATE OF THIS SECTION;

17 (b) A SUMMARY OF INDUSTRY OUTREACH THAT THE DEPARTMENT  
18 HAS CONDUCTED TO ENSURE THAT THE REGULATORY PROGRAM IS  
19 MEETING THE NEEDS OF THE REGULATED COMMUNITY;

20 (c) AN OVERVIEW OF INSPECTIONS, EXAMINATIONS, AND  
21 INVESTIGATIONS CONDUCTED SINCE THE EFFECTIVE DATE OF THIS SECTION,  
22 WHICH OVERVIEW MUST INCLUDE INFORMATION ON THE DEPARTMENT'S  
23 ANALYSIS OF GENERAL INDUSTRY TRENDS REGARDING THE FINANCIAL  
24 HEALTH OF COMMODITY HANDLERS AND FARM PRODUCT DEALERS. THE  
25 OVERVIEW MUST NOT INCLUDE ANY PERSONALLY IDENTIFYING  
26 INFORMATION OF PERSONS OR PLACES INSPECTED, EXAMINED, OR  
27 INVESTIGATED.



1 (d) AN OUTLINE OF ANY OBSTACLES OR CHALLENGES THE  
2 REGULATORY PROGRAM IS FACING AND ANY LEGISLATIVE CHANGES THAT  
3 THE DEPARTMENT RECOMMENDS TO ADDRESS THOSE OBSTACLES OR  
4 CHALLENGES.

5 (2) THIS SECTION IS REPEALED, EFFECTIVE SEPTEMBER 1, 2021.

6 **35-36-109. [Formerly 35-36-125 and similar to**  
7 **35-37-122] Repeal of article.** This article 36 is repealed, effective July  
8 1, 2020. ~~Prior to~~ SEPTEMBER 1, 2025. BEFORE the repeal, the licensing  
9 functions of the commissioner ~~shall be reviewed as provided for in~~ ARE  
10 SCHEDULED FOR REVIEW IN ACCORDANCE WITH section 24-34-104.

11 PART 2

12 COMMODITIES

13 **35-36-201. [Formerly 35-36-103] Licenses - commodity handler**  
14 **- rules.** (1) ~~No~~ A person shall NOT act as a commodity handler OR  
15 ~~SMALL-VOLUME COMMODITY HANDLER~~ in this state without having first  
16 obtained a license from the department.

17 (2) Every person acting as a commodity handler OR  
18 ~~SMALL-VOLUME COMMODITY HANDLER~~ in this state shall, each year before  
19 the date specified by the commissioner by rule, obtain OR RENEW a license  
20 from the department.

21 **35-36-202. [Formerly 35-36-104] Exemptions.** (1) The  
22 provisions of this ~~article 36~~ PART 2 that apply to warehouse operators do  
23 not apply to the owner or operator of ~~any~~ A public warehouse or other  
24 facility where the owner or operator:

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

1 seq.;

2 (b) Receives only commodities that the owner or operator has  
3 purchased, ~~or that he or she~~ THE OWNER OR OPERATOR is processing or  
4 cleaning for the owners of the commodities, or that ~~he or she~~ THE OWNER  
5 OR OPERATOR is maintaining for such other purposes as the department  
6 may, by rule, prescribe; and

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

15 **35-36-203. [Formerly 35-36-105] Commodity handler licenses**  
16 **- application requirements - fee.** (1) (a) ~~Each~~ AN applicant for a  
17 commodity handler ~~OR SMALL-VOLUME COMMODITY HANDLER~~ license  
18 shall pay, for each year in which the license is to be valid, a license fee  
19 established by the ~~agricultural~~ commission, which license fee the  
20 department shall collect and transmit to the state treasurer, who shall  
21 credit the ~~same~~ MONEY to the inspection and consumer services cash fund  
22 created in section 35-1-106.5.

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

1           (2) Application for a commodity handler ~~OR SMALL-VOLUME~~  
2 ~~COMMODITY HANDLER~~ license under this section shall be made to the  
3 department upon forms furnished by the department. The application ~~shall~~  
4 MUST include the following information:

5           (a) The name and address of the applicant and, if the applicant is  
6 a firm, exchange, association, or corporation, the full name of each  
7 member of the firm or the names of the officers of the exchange,  
8 association, or corporation;

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

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

20           ~~(e)~~ (d) The total rated storage capacity in bushels of each public  
21 warehouse;

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

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

27           (3) THE COMMISSIONER SHALL REVOKE ANY LICENSE GRANTED AS

1 A RESULT OF AN APPLICATION THAT IS FOUND TO HAVE BEEN MADE  
2 THROUGH fraud or misrepresentation. ~~in making any application shall in~~  
3 ~~and of itself work a revocation of any license granted pursuant to the~~  
4 ~~application.~~ All indicia of the possession of a license shall at all times be  
5 IS the property of the state of Colorado, and each licensee is entitled to the  
6 possession of the indicia only while ~~said~~ THE license remains valid and  
7 current.

8 **35-36-204. [Formerly 35-36-106] Licenses - requirements -**  
9 **rules.** (1) To receive or maintain a license, each applicant or licensee  
10 ~~shall~~ FOR AN INITIAL OR RENEWAL LICENSE MUST satisfy the following  
11 requirements:

12 (a) (I) EXCEPT AS PROVIDED IN SUBSECTION (1)(a)(II) OF THIS  
13 SECTION, the applicant or licensee shall furnish the commissioner with  
14 evidence of minimum provisional insurance coverage in an amount  
15 sufficient to protect the applicant's storage obligations. If, at any time, the  
16 commissioner evaluates an applicant's provisional insurance coverage to  
17 be insufficient, the commissioner may require such additional insurance  
18 as the commissioner considers sufficient. Failure to provide evidence of  
19 the additional insurance within thirty days after written notice from the  
20 commissioner constitutes grounds for the suspension or revocation of the  
21 license.

22 (II) A SMALL-VOLUME COMMODITY HANDLER NEED NOT COMPLY  
23 WITH SUBSECTION (1)(a)(I) OF THIS SECTION.

24 (b) (I) EXCEPT AS PROVIDED IN SUBSECTION (1)(b)(III) OF THIS  
25 SECTION, the applicant ~~or licensee shall~~ MUST furnish the commissioner  
26 with a financial statement that presents accurately ~~his or her~~ THE  
27 APPLICANT'S OR LICENSEE'S financial condition. The commissioner may

1 promulgate rules that clearly state the information required from each  
2 applicant or licensee under this section. Any financial statement  
3 submitted to the commissioner in support of a license application made  
4 pursuant to ~~the provisions of this article 36 shall be~~ PART 2 IS confidential.

5 (II) Whenever the commissioner deems it appropriate, ~~he or she~~  
6 THE COMMISSIONER may require ~~any~~ AN applicant for an initial license,  
7 ~~any~~ AN applicant for a renewal of a license, or ~~any~~ A licensee to submit  
8 a financial statement or an audit prepared by a certified public accountant  
9 or any other information the commissioner deems necessary to determine  
10 whether the person is in an adequate financial position to carry out ~~his or~~  
11 ~~her~~ THE PERSON'S duties as a licensee.

12 (III) AN APPLICANT FOR A SMALL-VOLUME COMMODITY HANDLER  
13 LICENSE NEED NOT COMPLY WITH THE FINANCIAL STATEMENT SUBMISSION  
14 REQUIREMENT SET FORTH IN SUBSECTION (1)(b)(I) OF THIS SECTION.

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

20 **35-36-205. [Formerly 35-36-107] Disciplinary powers - licenses.**

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

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

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

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

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

9 (e) ~~WITH RESPECT TO A COMMODITY HANDLER APPLICANT OR~~  
10 ~~LICENSEE~~, failed or refused to execute and deliver to the commissioner a  
11 surety bond as required by ~~section 35-36-119~~ SECTION 35-36-216;

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

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

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

19 (2) All proceedings concerning the denial, refusal to renew,  
20 revocation, or suspension of a license or the placing of a licensee on  
21 probation shall be conducted pursuant to ~~the provisions of~~ article 4 of title  
22 24.

23 (3) Any previous violation of ~~the provisions of this article 36~~ PART  
24 2 OR SECTION 35-36-104 by the applicant or any person connected with  
25 the applicant in the business for which the applicant seeks to be licensed  
26 or, in the case of a partnership or corporation applicant, any previous  
27 violations of ~~the provisions of this article 36~~ PART 2 OR SECTION

1 35-36-104 by a partner, officer, director, or stockholder of more than  
2 thirty percent of the outstanding shares, is sufficient grounds for the  
3 denial of a license.

4 **35-36-206. [Formerly 35-36-108] Bailment of commodities.**

5 (1) Acceptance of commodities for storage by a warehouse operator ~~shall~~  
6 ~~constitute~~ CONSTITUTES a bailment and not a sale. Stored commodities  
7 ~~shall~~ ARE not ~~be liable~~ SUBJECT to seizure upon process of a court in an  
8 action against the bailee, except upon action by owners of the stored  
9 commodities or the commissioner to enforce the terms ~~thereof~~ OF THE  
10 BAILMENT; but, in the event of the failure or insolvency of a bailee,  
11 commodities shall be first applied exclusively to the settlement on an  
12 equal basis of all outstanding negotiable warehouse receipts and other  
13 open storage obligations for commodities so stored with the bailee.

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

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

17 **35-36-207. [Formerly 35-36-109] Credit sale contracts - rules.**

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

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

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

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

- 1 (d) The contract number;
- 2 (e) The words "not a storage contract" printed in block capital  
3 letters in bold-faced type, conspicuously on the first page of the contract;
- 4 (f) One or more statements specified by the commissioner by rule,  
5 including one that warns a producer that entering into a credit sale  
6 contract entails a risk that the bond may not completely protect the  
7 producer from loss in the event of a failure of the commodity handler.

8 (2) (a) A commodity ~~handler's~~ HANDLER OR A SMALL-VOLUME  
9 COMMODITY HANDLER SHALL RETAIN ~~records shall be retained~~ for a  
10 period of two years and shall KEEP THE RECORDS AT THE COMMODITY  
11 HANDLER'S OR THE SMALL-VOLUME COMMODITY HANDLER'S PLACE OF  
12 BUSINESS AT ALL TIMES.

13 (b) (I) WITH RESPECT TO A CREDIT SALE CONTRACT, A COMMODITY  
14 HANDLER SHALL RETAIN RECORDS FOR A PERIOD OF TWO YEARS AFTER THE  
15 DATE OF COMPLETION OF THE CREDIT SALE CONTRACT.

16 (II) THE RECORDS MUST reflect those credit sale contracts that  
17 have been cancelled and those that are still open ~~The records shall~~ AND  
18 be kept at the commodity handler's place of business at all times.

19 (3) THE COMMISSIONER SHALL REQUIRE an annual report of the  
20 status of the credit sale contracts ~~may be required by the commissioner~~  
21 along with the financial statement required in section ~~35-36-106~~  
22 35-36-204 (1)(b).

23 (4) A COMMODITY HANDLER OR SMALL-VOLUME COMMODITY  
24 HANDLER SHALL CONSECUTIVELY NUMBER all credit sale contracts entered  
25 into by a THE commodity handler ~~shall be consecutively numbered by the~~  
26 commodity handler, and MAKE AVAILABLE copies ~~thereof shall be made~~  
27 available by the commodity handler OF THE CREDIT SALE CONTRACTS for



1 inspection and examination by the commissioner or ~~his or her~~ THE  
2 COMMISSIONER'S authorized agents.

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

10 (a) Cash;

11 (b) Commodity assets, including commodities and warehouse  
12 receipts or other ~~evidences~~ EVIDENCE of storage of commodities;

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

15 (d) An irrevocable letter of credit in favor of the commissioner,  
16 which letter of credit ~~shall be~~ IS subject to ~~the provisions of section~~  
17 ~~35-36-119~~ SECTION 35-36-216. ~~or~~

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

20 (6) A SMALL-VOLUME COMMODITY HANDLER SHALL NOT ENTER  
21 INTO OR OFFER TO ENTER INTO A CREDIT SALE CONTRACT.

22 **35-36-208. [Formerly 35-36-110] Commodity grades**  
23 **established - rules.** The department may promulgate rules concerning  
24 commodity grades in accordance with the standards established by the  
25 United States department of agriculture as the official grain standards of  
26 the United States government.

27 **35-36-209. [Formerly 35-36-112] Negotiable warehouse**

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

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

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

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

20            **35-36-210. [Formerly 35-36-113] Use of scale tickets and**  
21    **negotiable warehouse receipts.** (1) It is unlawful to issue paper  
22    negotiable warehouse receipts other than those furnished by the  
23    department. ~~The~~ A licensee shall issue these receipts consecutively, as  
24    numbered, and each receipt must state the date on which it is actually  
25    issued.

26            (2) Nothing in this ~~article 36 shall be construed to prevent~~ PART  
27    2 PREVENTS the issuance of nonnegotiable scale tickets or other

1 nonnegotiable ~~evidences~~ EVIDENCE of a similar nature showing the date  
2 on which the commodities were received, the quantities received, and the  
3 condition of the commodities upon their delivery.

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

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

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

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

6 **35-36-211. [Formerly 35-36-114] Commodity handler records**  
7 **- separate and distinct - time of maintenance - definition.** (1) A  
8 commodity handler OR SMALL-VOLUME COMMODITY HANDLER operating  
9 another business in conjunction with, or in proximity to, the handler's  
10 commodity handling business shall keep a complete set of records for the  
11 commodity handling business, entirely separate and distinct from the  
12 accounts and records of that other business. The deposits of commodities  
13 for the account of another business or for commodities owned by the  
14 commodity handler OR SMALL-VOLUME COMMODITY HANDLER shall be  
15 entered in the books of the commodity handler OR SMALL-VOLUME  
16 COMMODITY HANDLER in the same manner as those of other depositors.  
17 For the purpose of this section, "other business" ~~shall mean~~ MEANS any  
18 other separate and legally established enterprise that is distinct and  
19 separate from the legal and financial transactions of the commodity  
20 handling business.

21 (2) Commodity handlers OR SMALL-VOLUME COMMODITY  
22 HANDLERS shall maintain adequate records and systems for the filing and  
23 accounting of negotiable warehouse receipts, cancelled negotiable  
24 warehouse receipts, scale tickets, and other documents and transactions  
25 necessary or common to the commodity handling industry. A COMMODITY  
26 HANDLER OR SMALL-VOLUME COMMODITY HANDLER SHALL RETAIN  
27 cancelled negotiable warehouse receipts, copies of scale tickets, and

1 copies of other documents evidencing ownership or ownership liability  
2 shall be retained by the commodity handler for a period of at least three  
3 years after the date of cancellation.

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

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

27 (5) A settlement sheet shall be maintained for each owner and

1 shall contain the following: Owner's name; scale ticket numbers; total  
2 receipts; total withdrawals; test weight; and grade, if assigned. A copy of  
3 a current settlement sheet shall be provided TO the owner upon request.

4 **35-36-212. [Formerly 35-36-115] Warehouse operator's**  
5 **liability for disposal of tainted commodities.** (1) A warehouse operator  
6 ~~shall be~~ IS liable for any loss or deterioration of commodities in a public  
7 warehouse caused by the warehouse operator's failure to exercise  
8 reasonable care of the commodities.

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

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

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

27 **35-36-213. [Formerly 35-36-116] Enforcement - inspection of**

1 **commodity handlers' property - confidentiality.** (1) The department  
2 has the power to inspect commodity handlers' ~~OR SMALL-VOLUME~~  
3 ~~COMMODITY HANDLERS~~ places of business. The department shall  
4 investigate any complaint concerning the operation of any commodity  
5 handler ~~OR SMALL-VOLUME COMMODITY HANDLER~~, or any person  
6 attempting or offering to act as ~~such~~ A COMMODITY HANDLER ~~OR~~  
7 ~~SMALL-VOLUME COMMODITY HANDLER~~, subject to ~~the provisions of this~~  
8 ~~article 36~~ PART 2.

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

14 (3) The commissioner, upon consent of the licensee or upon  
15 obtaining an administrative search warrant, has the right to inspect any  
16 commodity handler's ~~OR SMALL-VOLUME COMMODITY HANDLER'S~~ place  
17 of business where commodities are stored, handled, or received and any  
18 records pertaining to storage obligations and commodity positions kept  
19 by the commodity handler ~~OR SMALL-VOLUME COMMODITY HANDLER~~ that  
20 pertain to the operation ~~thereof~~ OF THE PLACE OF BUSINESS. The property,  
21 books, records, accounts, and papers pertaining to storage obligations and  
22 commodity positions of every commodity handler ~~shall be~~ ~~OR~~  
23 ~~SMALL-VOLUME COMMODITY HANDLER~~ ARE subject to inspection and  
24 copying by the commissioner.

25 (4) The commissioner ~~shall have~~ HAS full authority to administer  
26 oaths and take statements, to issue subpoenas requiring the attendance of  
27 witnesses and the production of all books, memoranda, papers, and other

1 documents, articles, or instruments, and to compel the disclosure by the  
2 witnesses of all facts known to them relative to the matters under  
3 investigation. Upon the failure or refusal of ~~any~~ A witness to obey ~~any~~ A  
4 subpoena, the commissioner may petition the district court, and, upon a  
5 proper showing, the court may enter an order compelling the witness to  
6 appear and testify or produce documentary evidence. Failure to obey such  
7 an order of the court ~~shall be~~ IS punishable as a contempt of court.

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

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

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

27 (8) In the course of any investigation, the commissioner may



1 attempt to effectuate a settlement between the respective parties.

2 (9) (a) If the commissioner determines, after concluding an  
3 investigation on any complaint, that reasonable grounds exist to believe  
4 that a licensee has violated ~~any of the provisions of this article 36~~ PART  
5 2, the commissioner shall notify the licensee that the complaint is valid  
6 and shall inform the licensee of ~~his or her~~ THE LICENSEE'S opportunity to  
7 request a hearing, in writing, on the complaint within ten days after the  
8 date of the notice.

9 (b) Upon the receipt of a request for a hearing from a licensee or  
10 if the commissioner determines that a hearing concerning any licensee is  
11 necessary, the commissioner shall cause a copy of the complaint or the  
12 grounds specified in ~~section 35-36-107~~ SECTION 35-36-205, together with  
13 a notice of the time and place of the hearing, to be served personally or  
14 by mail upon the licensee. Service shall be made at least ten days before  
15 the hearing, which shall be held in the city or town in which the business  
16 location of the licensee is situated or in which the transactions involved  
17 allegedly occurred or at any convenient place designated by the  
18 commissioner.

19 (c) The commissioner shall conduct the hearing pursuant to ~~the~~  
20 ~~provisions of section 24-4-105~~. Thereafter, the commissioner shall enter  
21 a decision specifying the relevant facts established at the hearing. If the  
22 commissioner determines from the facts specified that the licensee has not  
23 violated ~~any of the provisions of this article 36~~ PART 2 OR SECTION  
24 35-36-104, the COMMISSIONER SHALL DISMISS THE complaint. ~~shall be~~  
25 ~~dismissed~~. If the commissioner determines from the facts specified that  
26 the licensee has violated ~~any of the provisions of this article 36~~ PART 2 OR  
27 SECTION 35-36-104, and that the licensee has not yet made complete

1 restitution to the person complaining, the commissioner shall determine  
2 the amount of damages, if any, to which the person is entitled as the result  
3 of the violation and shall enter an order directing the offender to pay the  
4 amount to the person complaining on or before the date fixed in the order.  
5 A copy of the decision shall be furnished to all the respective parties to  
6 the complaint.

7 (10) As a result of the hearing, the commissioner may also enter  
8 any order suspending or revoking the license of a licensee or may place  
9 the licensee on probation if the commissioner determines that the licensee  
10 has committed any of the unlawful acts specified in ~~section 35-36-123~~  
11 SECTION 35-36-217 or that the licensee has violated ~~any of the provisions~~  
12 ~~of this article 36~~ PART 2 OR SECTION 35-36-104.

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

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

25 (c) The commissioner shall conduct the hearing pursuant to ~~the~~  
26 ~~provisions of~~ section 24-4-105 and thereafter shall enter an order and  
27 decision specifying the facts established at the hearing and either

1 dismissing the order to show cause, or directing the suspension or  
2 revocation of the license held by the licensee, or making such other  
3 conditional or probationary orders as may be proper. A copy of ~~said~~ THE  
4 order and decision shall be furnished to the licensee.

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

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

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

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

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

6 (14) A COMMODITY HANDLER OR SMALL-VOLUME COMMODITY  
7 HANDLER SHALL MAINTAIN A public warehouse ~~shall be maintained by the~~  
8 commodity handler in a manner adequate to provide a convenient and  
9 safe means of ingress and egress to the various storage bins and  
10 compartments by those persons authorized to make inspections.

11 (15) (a) Each warehouse shall be kept open for the purpose of  
12 receiving commodities for storage and delivering commodities out of  
13 storage every business day for a period of not less than six hours between  
14 the hours of 8 a.m. and 6 p.m., except as provided in subsection (15)(b)  
15 of this section. The commodity handler OR SMALL-VOLUME COMMODITY  
16 HANDLER shall post conspicuously on the door of the public entrance to  
17 ~~his or her~~ THE COMMODITY HANDLER'S OR SMALL-VOLUME COMMODITY  
18 HANDLER'S office and to ~~his or her~~ THE COMMODITY HANDLER'S OR  
19 SMALL-VOLUME COMMODITY HANDLER'S licensed warehouse a notice  
20 showing the hours during which the warehouse will be kept open; except  
21 that the notice is not necessary when a warehouse is kept open  
22 continuously from 8 a.m. to 6 p.m.

23 (b) Whenever a warehouse is not to be kept open as required by  
24 subsection (15)(a) of this section, the notice posted as prescribed in  
25 subsection (15)(a) of this section ~~shall~~ MUST state the period during which  
26 the warehouse is to be closed and the name, address, and telephone  
27 number, if any, of the person who ~~shall be~~ IS authorized to deliver

1 commodities stored in the warehouse upon lawful demand by the  
2 depositor ~~thereof~~ OF THE COMMODITY or the holder of the receipt ~~thereof~~  
3 OF THE COMMODITY, as the case may be.

4 **35-36-214. [Formerly 35-36-117] Procedure on shortage -**  
5 **refusal to submit to inspection.** (1) Whenever it appears probable after  
6 investigation that a licensed warehouse operator does not possess  
7 sufficient commodities to cover the outstanding negotiable warehouse  
8 receipts, scale tickets, or other ~~evidences~~ EVIDENCE of storage liability  
9 issued or assumed by the warehouse operator, the department may give  
10 notice to the warehouse operator that ~~he or she~~ THE WAREHOUSE  
11 OPERATOR is required to do all or any of the following:

- 12 (a) Cover the shortage;
- 13 (b) Give an additional bond or irrevocable letter of credit;
- 14 (c) Submit to such inspection as the department may deem  
15 necessary.

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

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

22 (b) Take possession of all commodities in the public warehouse  
23 owned, operated, or controlled by the warehouse operator and of all  
24 books, papers, records, and property of all kinds used in connection with  
25 the conduct or operation of the warehouse operator's public warehouse  
26 business, whether the books, papers, records, and property pertain  
27 specifically, exclusively, directly, or indirectly to that business or are

1 related to ~~his or her~~ THE WAREHOUSE OPERATOR'S handling, storage, or  
2 use of commodities in any other business;

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

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

12 (3) Upon its taking possession of the commodities, the department  
13 may give written notice of its action to the holders of all negotiable  
14 warehouse receipts or other ~~evidences~~ EVIDENCE of deposits issued for  
15 commodities to present their negotiable warehouse receipts or other  
16 ~~evidences~~ EVIDENCE of deposits for inspection or to account for the same.  
17 Thereupon, the department shall cause an audit to be made of the affairs  
18 of the public warehouse with respect to any commodity in which there is  
19 an apparent shortage, determine the amount of the shortage, and compute  
20 the shortage as to each owner of the commodity. The department shall  
21 attempt to notify the warehouse operator of the amount of the shortage  
22 and attempt to notify each owner ~~thereby~~ affected BY THE SHORTAGE. If  
23 the owner cannot be notified after a reasonable attempt by the department,  
24 the department ~~shall~~ IS not ~~be held~~ liable for any losses incurred by the  
25 owner.

26 (4) The department shall retain possession of the commodity in  
27 the public warehouse and of the books, papers, records, and property of

1 the warehouse operator until such time as the warehouse operator or the  
2 warehouse operator's bond or irrevocable letter of credit has satisfied the  
3 claims of all holders of negotiable warehouse receipts or other ~~evidences~~  
4 EVIDENCE of deposits. In case the shortage exceeds the amount of the  
5 bond or irrevocable letter of credit, the warehouse operator's bond or  
6 irrevocable letter of credit ~~shall satisfy~~ SATISFIES the claims pro rata.  
7 Nothing in this section ~~shall be construed to prevent~~ PREVENTS the  
8 department from complying with an order of a court of competent  
9 jurisdiction to surrender possession.

10 (5) If during or after the audit provided for in this section or at any  
11 other time the department is of the opinion that the warehouse operator  
12 is insolvent or in danger of becoming ~~so~~ INSOLVENT or is unable to satisfy  
13 the claims of all holders of negotiable warehouse receipts or other  
14 ~~evidences~~ EVIDENCE of deposits, the department may petition a court of  
15 competent jurisdiction in the county for the appointment of a receiver to  
16 operate or liquidate the business of the warehouse operator in accordance  
17 with applicable law.

18 (6) At any time within ten days after the department takes  
19 possession of any commodities or the books, papers, records, and  
20 property of any public warehouse, the warehouse operator may apply to  
21 a court of competent jurisdiction for an order requiring the department to  
22 show cause why the commodities, books, papers, records, and property  
23 should not be restored to the warehouse operator's possession. Upon its  
24 being served notice, the department ~~shall have not more than~~ HAS UP TO  
25 ten days to respond.

26 (7) (a) If a court of competent jurisdiction determines that all or  
27 any part of the commodities, books, papers, records, and property should

1 not be restored to the possession of the warehouse operator, the court  
2 may:

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

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

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

11 (8) If the warehouse operator does not apply to a court of  
12 competent jurisdiction for a show-cause order under subsection (6) of this  
13 section, the department's action is presumed valid, and the commissioner  
14 may determine the disposition of the commodities, books, papers, records,  
15 and property that were in the public warehouse and seized pursuant to this  
16 ~~article 36~~ PART 2. Pending determination of the ownership of the  
17 commodities, any ~~funds~~ MONEY received from the disposition of the  
18 commodities shall be placed in an interest-bearing escrow account.

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

27 (10) As a part of the expenses ~~so~~ incurred BY THE DEPARTMENT IN



1 CARRYING OUT THIS SECTION, the department or the receiver is authorized  
2 to include the cost of adequate liability insurance necessary to protect the  
3 department, its officers, and others engaged in carrying out the provisions  
4 of this section.

5 **35-36-215. [Formerly 35-36-118] Inspection fees.** (1) The state  
6 agricultural commission, after conferring with interested industry groups,  
7 is authorized to fix, assess, and collect fees for the inspection of  
8 commodity handlers OR SMALL-VOLUME COMMODITY HANDLERS.

9 (2) For each fiscal year, commencing on July 1, twenty-five  
10 percent of the direct and indirect costs of administering and enforcing this  
11 article 36 PART 2 shall be funded from the general fund. The agricultural  
12 commission shall establish a fee schedule to cover any direct and indirect  
13 costs not funded from the general fund. The inspection fee shall be paid  
14 by the person, firm, corporation, or other organization requesting the  
15 service at the time it is rendered or as otherwise provided and authorized  
16 by the commission.

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

20 **35-36-216. [Formerly 35-36-119] Bonds or irrevocable letters**  
21 **of credit - exemptions.** (1) (a) Before any license is issued to any A  
22 commodity handler, the applicant shall file with the commissioner a bond  
23 executed by the applicant as principal and by a surety company qualified  
24 and authorized to do business in this state as a surety or an irrevocable  
25 letter of credit meeting the requirements of section 11-35-101.5, in the  
26 sum of not less than ten thousand dollars nor more than one million  
27 dollars, at the discretion of the commissioner.

1 (b) The bond or irrevocable letter of credit must be conditioned  
2 upon compliance with this ~~article 36~~ PART 2 AND SECTION 35-36-104 and  
3 upon the faithful and honest handling of commodities in accordance with  
4 this ~~article 36~~ PART 2 AND SECTION 35-36-104 and must cover any  
5 inspection fees due the department of ~~agriculture~~ by the commodity  
6 handler and all costs and reasonable attorney fees incident to any suit  
7 upon the bond or irrevocable letter of credit. The bond or irrevocable  
8 letter of credit must be to the department of ~~agriculture~~ in favor of every  
9 producer or owner and, in the instance of a bond, must remain in full  
10 force and effect until cancelled by the surety upon thirty days' prior  
11 written notice to the commissioner.

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

19 (II) The surety on the bond or the issuer of the letter of credit is  
20 not liable to pay any claim pursuant to ~~any~~ AN action brought under this  
21 ~~article 36~~ PART 2 if the action is not commenced within ~~one hundred~~  
22 ~~eighty~~ FIVE HUNDRED FORTY-EIGHT days, WHICH IS APPROXIMATELY  
23 EIGHTEEN MONTHS, after the date of the transaction, as that term is  
24 ~~defined~~ DESCRIBED in ~~section 35-36-116(13)~~ SECTION 35-36-213 (13), on  
25 which the claim is based, or the date of the loss, whichever is later.

26 (d) When ~~any~~ AN action is commenced on ~~said~~ THE bond or  
27 irrevocable letter of credit, the commissioner may require the filing of a

1 new bond or irrevocable letter of credit, and the commodity handler's  
2 failure to file the new bond or irrevocable letter of credit within ten days  
3 after the commencement of ~~said~~ THE action constitutes grounds for the  
4 suspension or revocation of ~~his or her~~ THE COMMODITY HANDLER'S  
5 license.

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

13 (2) Whenever the commissioner determines that a previously  
14 approved bond or irrevocable letter of credit is or for any cause has  
15 become insufficient, the commissioner may require THAT A COMMODITY  
16 HANDLER PROVIDE an additional bond or irrevocable letter of credit or  
17 other evidence of financial responsibility ~~to be given by a commodity~~  
18 ~~handler~~ to conform to the requirements of this ~~article 36~~ PART 2 AND  
19 SECTION 35-36-104 or any rule promulgated pursuant to ~~the provisions of~~  
20 this article 36 REGARDING COMMODITY HANDLERS. The commodity  
21 handler's failure to comply with the commissioner's requirement within  
22 thirty days after written demand ~~therefor~~ FOR COMPLIANCE constitutes  
23 grounds for the suspension or revocation of ~~his or her~~ THE COMMODITY  
24 HANDLER'S license.

25 (3) THIS SECTION DOES NOT APPLY TO SMALL-VOLUME  
26 COMMODITY HANDLERS.

27 **35-36-217. [Formerly 35-36-123] Unlawful acts - definition.**

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

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

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

14 (c) Intentionally make false or misleading statements as to the  
15 market conditions for commodities or false or misleading statements as  
16 to the condition, quality, or quantity of commodities received, handled,  
17 sold, or stored. Violation of this subsection (1)(c) ~~shall constitute~~ IS a  
18 class 6 felony.

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

22 (e) Act as a commodity handler ~~OR SMALL-VOLUME COMMODITY~~  
23 ~~HANDLER~~ without having obtained a license or act as a commodity  
24 handler without having filed a surety bond or irrevocable letter of credit,  
25 as provided in this ~~article 36~~ PART 2. Violation of this subsection (1)(e)  
26 ~~shall constitute~~ IS a class 6 felony.

27 (f) Willfully convert to ~~his or her~~ THE PERSON'S own use or benefit

1 the commodities of another. Violation of this subsection (1)(f) ~~shall~~  
2 ~~constitute~~ IS theft, as defined in section 18-4-401.

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

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

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

13 (j) Willfully alter or destroy any negotiable warehouse receipt or  
14 the record of the negotiable warehouse receipt; ~~or~~ issue a negotiable  
15 warehouse receipt without preserving a record ~~thereof~~ OF THE  
16 NEGOTIABLE WAREHOUSE RECEIPT; ~~or~~ issue a negotiable warehouse  
17 receipt when the commodity described is not in the building certified in  
18 the receipt; ~~or~~, with intent to defraud, issue a second or other negotiable  
19 warehouse receipt for any commodity for which, or for any part of which,  
20 a valid negotiable warehouse receipt is already outstanding and in force;  
21 ~~or~~, while ~~any~~ A valid negotiable warehouse receipt is outstanding and in  
22 force, sell, pledge, mortgage, encumber, or transfer a commodity in  
23 violation of ~~the provisions of this article 36~~ PART 2 OR SECTION 35-36-104  
24 or permit the same to be done without the written consent of the holder  
25 of the negotiable warehouse receipt or receive the property or help to  
26 dispose of the ~~same~~ PROPERTY. Violation of this subsection (1)(j) ~~shall~~  
27 ~~constitute~~ IS a class 6 felony.

1 (k) Sell commodities for less than the current market price to ~~any~~  
2 A person with whom ~~he or she~~ THE PERSON has any financial connection,  
3 directly or indirectly, either as an owner of the corporate stock of a  
4 corporation, as a copartner, or in any other capacity, or sell any  
5 commodities out of the purchase price of which ~~said~~ THE COMMODITY  
6 handler OR SMALL-VOLUME COMMODITY HANDLER, directly or indirectly,  
7 retains any portion ~~thereof~~ OF THE PURCHASE PRICE other than the  
8 commission allowed and reported pursuant to ~~section 35-37-114~~ SECTION  
9 35-36-310. Violation of this subsection (1)(k) ~~shall constitute~~  
10 CONSTITUTES theft, as defined in section 18-4-401.

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

26 PART 3

27 FARM PRODUCTS

1           **35-36-301. [Formerly 35-37-102] Legislative declaration.** The  
2 general assembly hereby declares that farm products are commodities  
3 affected with a public interest and thus should be regulated for the  
4 protection of both the producer and the consumer.

5           **35-36-302. [Formerly 35-37-104] Application for license - rules.**

6 (1) ~~No~~ A person shall NOT act as a dealer, small-volume dealer, or agent  
7 without having obtained a license as provided in this ~~article 37~~ PART 3.  
8 Every person acting as a dealer, small-volume dealer, or agent shall file  
9 an application in writing with the commissioner for a license to transact  
10 the business of dealer, small-volume dealer, or agent, and the application  
11 ~~shall~~ MUST be accompanied by the license fee provided for in ~~section~~  
12 ~~35-37-105~~ SECTION 35-36-303 for each specified class of business.

13           (2) The application in each case ~~shall~~ MUST state the class or  
14 classes of farm products the applicant proposes to handle; the full name  
15 of the person applying for the license; and, if the applicant is a firm,  
16 exchange, association, or corporation, the full name of each member of  
17 the firm or the names of the officers of the exchange, association, or  
18 corporation. The application ~~shall~~ MUST further state the principal  
19 business address of the applicant in the state of Colorado and elsewhere  
20 and the names of the persons authorized to receive and accept service of  
21 summons and legal notices of all kinds for the applicant. The applicant  
22 shall further satisfy the commissioner of ~~his or her~~ THE APPLICANT'S  
23 character, responsibility, and good faith in seeking to carry on the  
24 business stated in the application. In determining a person's character, the  
25 commissioner shall ~~be governed by the provisions of~~ COMPLY WITH  
26 section 24-5-101.

27           (3) In addition to the general requirements applicable to all classes

1 of applications, as set forth in this section, each application for an agent's  
2 license ~~shall~~ MUST include such information as the commissioner may  
3 consider proper or necessary, and the application ~~shall~~ MUST include the  
4 name and address of the applicant and the name and address of each  
5 dealer or small-volume dealer represented or sought to be represented by  
6 ~~said~~ THE agent and the written endorsement or nomination of the dealer  
7 or small-volume dealer. ~~No~~ A person shall NOT be licensed as an agent  
8 unless all of the agent's principals are licensed under this ~~article 37~~ PART  
9 3.

10 (4) Upon the applicant's filing of the proper application with the  
11 commissioner, accompanied by the proper fee, and when the  
12 commissioner is satisfied that the convenience and necessity of the  
13 industry and the public will be served ~~thereby~~ BY THE APPLICATION, the  
14 commissioner shall issue to the applicant a license entitling the applicant  
15 to conduct the business described in the application at the place named in  
16 the application until the date specified by the commissioner by rule or  
17 until the license has been suspended or revoked. The license of an agent  
18 ~~shall expire~~ EXPIRES upon the date of expiration of the license of the  
19 principal for whom the agent acts. The commissioner may also issue a  
20 license to each agent, with a separate agent's license being required for  
21 each principal. ~~Any~~ A dealer, small-volume dealer, or agent shall show  
22 the license upon the request of any interested person. Each licensed  
23 dealer, small-volume dealer, or agent shall post the person's license or a  
24 copy ~~thereof~~ OF THE LICENSE in the person's office or salesroom in plain  
25 view of the public.

26 (5) THE COMMISSIONER SHALL REVOKE ANY LICENSE GRANTED AS  
27 A RESULT OF fraud or misrepresentation in ~~making any application shall~~



1 ~~ipso facto work a revocation of any license granted pursuant thereto~~  
2 APPLYING FOR THE LICENSE. All indicia of the possession of a license ~~shall~~  
3 ~~be~~ ARE at all times the property of the state of Colorado, and each licensee  
4 is entitled to the possession ~~thereof~~ OF A LICENSE only for the duration of  
5 ~~said~~ THE license.

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

10 **35-36-303. [Formerly 35-37-105] License fee - renewal - rules.**

11 (1) (a) For filing the application described in ~~section 35-37-104~~ SECTION  
12 35-36-302, each applicant for a license in each of the following categories  
13 shall pay to the commissioner a fee as determined by the ~~agricultural~~  
14 commission, which fee shall be transmitted to the state treasurer for credit  
15 to the inspection and consumer services cash fund created in section  
16 35-1-106.5:

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

22 (II) Agents; and

23 (III) Small-volume dealers.

24 (b) For each fiscal year, commencing on July 1, twenty-five  
25 percent of the direct and indirect costs of administering and enforcing this  
26 ~~article 37 shall~~ PART 3 MUST be funded from the general fund. The  
27 ~~agricultural~~ commission shall establish a fee schedule to cover any direct

1 and indirect costs not funded from the general fund.

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

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

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

22 (5) Upon the failure of an applicant to file a bond or an  
23 irrevocable letter of credit meeting the requirements of section  
24 11-35-101.5, within ninety days ~~of~~ AFTER the date of application, the  
25 application will be rendered void, and the license fee will not be  
26 refunded. Any subsequent application for a license ~~shall require~~ REQUIRES  
27 a new license fee.

1 (6) Whenever the commissioner deems it appropriate, the  
2 commissioner may require ~~of any~~ A LICENSEE OR AN applicant for an  
3 initial OR RENEWAL license ~~any applicant for a renewal of a license, or any~~  
4 ~~licensee the submission of~~ TO SUBMIT a financial statement or an audit  
5 prepared ~~by a certified public accountant~~ ACCORDING TO GENERALLY  
6 ~~ACCEPTED ACCOUNTING PRINCIPLES~~ or any other information to determine  
7 whether the person is in an adequate financial position to carry out ~~his or~~  
8 ~~her~~ THE PERSON'S duties as a licensee.

9 **35-36-304. [Formerly 35-37-106] Bonds and irrevocable letters**  
10 **of credit - exemptions.** (1) (a) Before ~~any~~ THE COMMISSIONER MAY  
11 ISSUE A license ~~is issued~~ to ~~any~~ A dealer, the applicant shall file with the  
12 commissioner IN THE SUM OF NOT LESS THAN TWO THOUSAND DOLLARS  
13 NOR MORE THAN ONE MILLION DOLLARS, AT THE DISCRETION OF THE  
14 COMMISSIONER:

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

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

22 (b) The bond or irrevocable letter of credit must be conditioned  
23 upon compliance with this ~~article 37~~ PART 3 AND SECTION 35-36-104 and  
24 upon the faithful and honest handling of farm products in accordance with  
25 this ~~article 37~~ PART 3 and shall cover any fees due the department of  
26 ~~agriculture~~ by the dealer and all costs and reasonable attorney fees  
27 incident to any suit upon the bond or irrevocable letter of credit. The bond

1 or irrevocable letter of credit must be to the department of agriculture in  
2 favor of every producer, dealer, small-volume dealer, or owner and, in the  
3 instance of a bond, must remain in full force and effect until cancelled by  
4 the surety upon thirty days' prior written notice to the commissioner.

5 (c) (I) ~~Any~~ A producer, owner, small-volume dealer, or other  
6 dealer within the state of Colorado claiming to be injured by the fraud,  
7 deceit, or willful negligence of, or failure to comply with this ~~article 37~~  
8 PART 3 OR SECTION 35-36-104 by, ~~any~~ A dealer may request the  
9 department, ~~of agriculture~~, as beneficiary, to demand payment on the  
10 irrevocable letter of credit or surety bond to recover the damages caused  
11 by the fraud, deceit, willful negligence, or failure to comply. ~~with this~~  
12 ~~article 37.~~

13 (II) The surety on the bond or the issuer of the letter of credit is  
14 not liable to pay ~~any~~ A claim pursuant to ~~any~~ AN action brought under this  
15 ~~article 37~~ PART 3 if the action is not commenced within ~~one hundred~~  
16 ~~eighty~~ FIVE HUNDRED FORTY-EIGHT days, WHICH IS APPROXIMATELY  
17 EIGHTEEN MONTHS, after the date of the transaction, as that term is  
18 ~~defined~~ DESCRIBED in ~~section 35-36-116 (13)~~ SECTION 35-36-305 (12), on  
19 which the claim is based, or the date of the loss, as that term is defined in  
20 section ~~35-36-102 (15)~~ 35-36-102 (20), whichever is later.

21 (d) When ~~any~~ AN action is commenced on ~~said~~ THE bond or  
22 irrevocable letter of credit, the commissioner may require ~~the filing of~~  
23 THE LICENSEE TO FILE a new bond or irrevocable letter of credit, and  
24 failure of the licensee to file the new bond or irrevocable letter of credit  
25 within ten days after the commencement of ~~said~~ THE action constitutes  
26 grounds for the suspension or revocation of ~~his or her~~ THE LICENSEE'S  
27 license.

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

13 (f) The bond or irrevocable letter of credit required by ~~section~~  
14 ~~35-36-119~~ ~~shall~~ SECTION 35-36-216 MUST apply to the activities as a  
15 dealer of ~~any~~ A person licensed pursuant to ~~article 36~~ PART 2 of this title  
16 ~~35~~ ARTICLE 36. The persons ~~shall~~ ARE also ~~be~~ subject to ~~the provisions of~~  
17 this section and ~~section 35-37-107~~ SECTION 35-36-305.

18 (2) Whenever the commissioner determines that a previously  
19 approved bond or irrevocable letter of credit is, or for any cause has  
20 become, insufficient, the commissioner may require A DEALER TO  
21 FURNISH an additional bond or irrevocable letter of credit or other  
22 evidence of financial responsibility ~~to be given by a dealer~~ to conform to  
23 the requirements of this ~~article 37~~ PART 3 or any rule promulgated  
24 pursuant to ~~the provisions of this article 37~~ ARTICLE 36. The failure of the  
25 dealer to comply with the commissioner's requirement within thirty days  
26 after written demand ~~therefor~~ FOR COMPLIANCE constitutes grounds for  
27 the suspension or revocation of ~~his or her~~ THE DEALER'S license.

1           **35-36-305. [Formerly 35-37-107] Investigations, hearings, and**

2 **examinations.** (1) For the purpose of enforcing ~~the provisions of this~~  
3 ~~article 37~~ PART 3, the commissioner may receive complaints from persons  
4 against ~~any~~ A dealer, small-volume dealer, agent, or person assuming or  
5 attempting to act as ~~such~~ A DEALER, SMALL-VOLUME DEALER, OR AGENT  
6 and, upon the receipt of a complaint, may make any and all necessary  
7 investigations relative to the complaint.

8           (2) The commissioner upon ~~his or her~~ THE COMMISSIONER'S own  
9 motion may, and upon the verified complaint of any person shall,  
10 investigate any transactions involving ~~any provisions of this article 37~~  
11 PART 3.

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

17           (b) The commissioner, upon consent of the licensee or upon  
18 obtaining a search warrant, ~~shall have~~ HAS free and unimpeded access to  
19 all records required to be kept BY THE LICENSEE and may make copies of  
20 the records.

21           (c) The commissioner ~~shall have~~ HAS full authority to administer  
22 oaths and take statements; to issue subpoenas requiring the attendance of  
23 witnesses and the production of all books, memoranda, papers, and other  
24 documents, articles, or instruments; and to compel the disclosure by the  
25 witnesses of all facts known to them relative to the matters under  
26 investigation. Upon the failure or refusal of ~~any~~ A witness to obey ~~any~~ A  
27 subpoena, the commissioner may petition the district court, and, upon a

1 proper showing, the court may enter an order compelling the witness to  
2 appear and testify or produce documentary evidence. Failure to obey the  
3 order of the court ~~shall be~~ IS punishable as a contempt of court.

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

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

12 (6) If the investigation is against a licensee, the commissioner  
13 shall proceed to ascertain the names and addresses of all producers,  
14 dealers, small-volume dealers, or owners of farm products, together with  
15 the accounts unaccounted for or due and owing to them by the licensee,  
16 and shall request all the producers, dealers, small-volume dealers, or  
17 owners to file verified statements of their respective claims with the  
18 commissioner. If, AFTER THE COMMISSIONER MAKES THE REQUEST FOR  
19 VERIFIED STATEMENTS, a producer, dealer, small-volume dealer, or owner  
20 ~~so requested~~ fails, refuses, or neglects to file a verified statement in the  
21 office of the commissioner within thirty days after the date of the request,  
22 the commissioner ~~shall thereupon be~~ IS relieved of any further duty or  
23 action under this ~~article 37~~ PART 3 on behalf of ~~said~~ THE producer, dealer,  
24 small-volume dealer, or owner.

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

27 (8) (a) If the commissioner determines, after concluding an

1 investigation on ~~any~~ A complaint, that reasonable grounds exist to believe  
2 that a licensee has violated ~~any of the provisions of this article 37~~ PART  
3 3 OR SECTION 35-36-104, the commissioner shall notify the licensee that  
4 the complaint is valid and ~~shall~~ inform the licensee of ~~his or her~~ THE  
5 LICENSEE'S opportunity to request a hearing, in writing, on the complaint  
6 within ten days after the date of the notice.

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

17 (c) The commissioner shall conduct the hearing pursuant to ~~the~~  
18 ~~provisions of~~ section 24-4-105. Thereafter, the commissioner shall enter  
19 in ~~his or her~~ THE COMMISSIONER'S office a decision specifying the  
20 relevant facts established at the hearing. If the commissioner determines  
21 from the facts specified that the licensee has not violated ~~any of the~~  
22 ~~provisions of this article 37~~ PART 3 OR SECTION 35-36-104, the  
23 COMMISSIONER SHALL DISMISS THE complaint. ~~shall be dismissed.~~ If the  
24 commissioner determines from the facts specified that the licensee has  
25 violated ~~any of the provisions of this article 37~~ PART 3 OR SECTION  
26 35-36-104, and that the licensee has not yet made complete restitution to  
27 the person complaining, the commissioner shall determine the amount of



1 damages, if any, to which the person is entitled as the result of the  
2 violation and enter an order directing the offender to pay the person  
3 complaining the amount OF DAMAGES on or before the date fixed in the  
4 order. THE COMMISSIONER SHALL CAUSE TO BE FURNISHED a copy of the  
5 decision ~~shall be furnished~~ to all the respective parties to the complaint.

6 (9) As a result of the hearing, the commissioner may also enter  
7 ~~any~~ AN order suspending or revoking the license of a licensee or may  
8 place the licensee on probation if the commissioner determines that the  
9 licensee has committed any of the unlawful acts specified in ~~section~~  
10 ~~35-37-118~~ SECTION 35-36-313 or that the licensee has violated ~~any of the~~  
11 ~~provisions of this article 37~~ PART 3 OR SECTION 35-36-104.

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

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

27 (c) The commissioner shall conduct the hearing pursuant to ~~the~~

1 ~~provisions of section 24-4-105 and thereafter shall enter in his or her~~ THE  
2 COMMISSIONER'S office an order and decision specifying the facts  
3 established at the hearing and ~~either~~ dismissing the order to show cause,  
4 ~~or~~ directing the suspension or revocation of the license held by the  
5 licensee, or making such other conditional or probationary orders as may  
6 be proper. THE COMMISSIONER SHALL CAUSE A copy of the order and  
7 decision ~~shall~~ TO be furnished to the licensee.

8 (d) Nothing in this section ~~shall be construed as limiting~~ LIMITS  
9 the power of the commissioner to revoke or suspend a license when  
10 satisfied of the existence of any of the facts specified in ~~section~~  
11 ~~35-37-118~~ SECTION 35-36-313.

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

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

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

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

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

14 **35-36-306. [Formerly 35-37-108] Disciplinary powers - licenses.**

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

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

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

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

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

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

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

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

11 (2) All proceedings concerning the denial, refusal to renew,  
12 revocation, or suspension of a license or the placing of a licensee on  
13 probation shall be conducted pursuant to ~~the provisions of section~~  
14 ~~35-37-107~~ SECTION 35-36-305 and article 4 of title 24.

15 (3) ~~Any~~ A previous violation of ~~the provisions of this article 37~~  
16 PART 3 OR SECTION 35-36-104 by the applicant or any person connected  
17 with the applicant in the business for which the applicant seeks to be  
18 licensed, or, in the case of a partnership or corporation applicant, any  
19 previous violations of ~~the provisions of this article 37~~ THIS PART 3 OR  
20 SECTION 35-36-104 by a partner, officer, director, or stockholder of more  
21 than thirty percent of the outstanding shares, is sufficient grounds for the  
22 denial of a license.

23 **35-36-307. [Formerly 35-37-111] Credit sale contracts - rules.**

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

1 credit sale contract must contain the following information:

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

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

5 (c) The name and address of the producer or owner and the  
6 signature of the dealer or small-volume dealer or the authorized agent  
7 thereof OF THE DEALER OR SMALL-VOLUME DEALER;

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

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

15 (2) A DEALER OR SMALL-VOLUME DEALER SHALL RETAIN records  
16 of a dealer or small-volume dealer ~~shall be retained~~ for a period of two  
17 years AFTER THE DATE OF COMPLETION OF THE CREDIT SALE CONTRACTS,  
18 and ~~shall~~ THE RECORDS MUST reflect those credit sale contracts that have  
19 been PAID, cancelled, OR AMENDED and those that are still open. The  
20 DEALER OR SMALL-VOLUME DEALER SHALL KEEP THE records ~~shall be kept~~  
21 at the dealer's or small-volume dealer's place of business at all times.

22 (3) THE COMMISSIONER SHALL REQUIRE an annual report of the  
23 status of all of a dealer's or small-volume dealer's credit sale contracts  
24 ~~may be required by the commissioner~~ ALONG WITH THE FINANCIAL  
25 STATEMENT REQUIRED UNDER SECTION 35-36-204 (1)(b).

26 (4) A DEALER OR SMALL-VOLUME DEALER SHALL CONSECUTIVELY  
27 NUMBER all credit sale contracts entered into by a THE dealer or

1 small-volume dealer shall be consecutively numbered by the dealer, and  
2 MAKE copies thereof shall be made OF THE CREDIT SALE CONTRACTS  
3 available for inspection by the commissioner or the commissioner's  
4 authorized agents.

5 (5) A DEALER OR SMALL-VOLUME DEALER ISSUING CREDIT SALE  
6 CONTRACTS SHALL MAINTAIN POSITIVE WORKING CAPITAL AND A CURRENT  
7 RATIO EQUAL TO OR GREATER THAN ONE-TO-ONE AND RESERVES IN AN  
8 AMOUNT EQUALING OR EXCEEDING ONE HUNDRED PERCENT OF THE VALUE  
9 OF ALL OF THAT DEALER'S OR SMALL-VOLUME DEALER'S OPEN CREDIT SALE  
10 CONTRACTS, WHICH VALUE SHALL BE DETERMINED WITH REFERENCE TO  
11 THE DAILY BID PRICE. THE RESERVES MAY BE IN THE FORM OF ANY ONE OR  
12 A COMBINATION OF THE FOLLOWING:

- 13 (a) CASH;
- 14 (b) FARM PRODUCT ASSETS, INCLUDING FARM PRODUCTS OR OTHER  
15 EVIDENCE OF STORAGE OF FARM PRODUCTS;
- 16 (c) CREDIT SALE CONTRACTS WITH OTHER DEALERS OR  
17 SMALL-VOLUME DEALERS LICENSED BY THE DEPARTMENT; OR
- 18 (d) AN IRREVOCABLE LETTER OF CREDIT IN FAVOR OF THE  
19 COMMISSIONER, WHICH LETTER OF CREDIT IS SUBJECT TO SECTION  
20 35-36-216.

21 **35-36-308. [Formerly 35-37-112] Records of dealers.** (1) Every  
22 dealer handling farm products for any A consignor having received any  
23 farm products on commission for sale shall promptly make and keep a  
24 correct record, showing in detail the following with reference to the  
25 handling, sale, or storage of the farm products:

- 26 (a) The name and address of the consignor;
- 27 (b) The date received;

- 1 (c) The condition and quantity upon arrival;
- 2 (d) The date of the sale for the account of the consignor;
- 3 (e) The price for which sold;
- 4 (f) An itemized statement of the charges to be paid by the  
5 consignor in connection with the sale;
- 6 (g) The names and addresses of the purchasers if the dealer has  
7 ~~any~~ A financial interest in the business of the purchasers or if the  
8 purchasers have ~~any~~ A financial interest in the business of the dealer,  
9 directly or indirectly, as a holder of the other's corporate stock, as a  
10 copartner, as a lender or borrower of money to or from the other, or in any  
11 other capacity;
- 12 (h) A lot number or other identifying mark for each consignment,  
13 which number or mark ~~shall~~ MUST appear on all sales tags or other  
14 essential records needed to show what the product actually sold for; AND
- 15 (i) Any claims that have been or may be filed by the dealer against  
16 any person for overcharges or for damages resulting from the injury or  
17 deterioration of the farm products by the act, neglect, or failure of the  
18 person. ~~and~~ THE DEALER SHALL MAKE the records ~~shall be open to the~~  
19 AVAILABLE FOR inspection ~~of~~ BY the commissioner and the consignor for  
20 whom the claims are made.

21 **35-36-309. [Formerly 35-37-113] Records of small-volume**  
22 **dealers.** Each small-volume dealer shall maintain records of all aspects  
23 of each purchase of farm products in the form and manner required by the  
24 commissioner.

25 **35-36-310. [Formerly 35-37-114] Daily reports and settlements.**  
26 (1) When requested by ~~his or her~~ A DEALER'S consignor, ~~a~~ THE dealer,  
27 before the close of the next business day following the sale of any farm

1 products consigned to the dealer, shall transmit or deliver to the owner or  
2 consignor a true written report of the sale, showing the amount sold and  
3 the selling price. THE DEALER SHALL MAKE remittance in full TO THE  
4 CONSIGNER of the amount realized from the sale, including all collections,  
5 overcharges, and damages, less the agreed commission and other charges  
6 together with a complete account of sales ~~shall be made to the consignor~~  
7 within ten days after the receipt of the money by the dealer unless  
8 otherwise agreed to in writing. In the account, the names and addresses  
9 of purchasers need not be given, except as required in ~~section 35-37-112~~  
10 SECTION 35-36-308.

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

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

21 **35-36-311. [Formerly 35-37-115] Pooled consignment.** Local  
22 produce or fruit associations or other shippers located in the  
23 neighborhood where FARM products are grown may receive a reasonable  
24 compensation for loading, shipping, and securing persons to handle the  
25 ~~same~~ PRODUCTS on commission in markets away from the locality where  
26 grown. Dealers receiving consignments of farm products from a number  
27 of consignors under written agreements or under written authority from



1 them to market the products in season and prorate the net proceeds of the  
2 consignments among all consignors or to market the same in connection  
3 with other products of the same class may withhold the proportion of the  
4 net returns of sales of the consignments as may be necessary to carry out  
5 the agreements pertaining to the consignments until final sales have been  
6 made. In every case, final settlement shall be made within fifteen days  
7 after the final sale of the consignment, unless otherwise agreed to in  
8 writing by the consignor.

9 **35-36-312. [Formerly 35-37-116] Enforcement.** ~~(1) The~~  
10 ~~commissioner shall be the enforcing authority of this article 37, and the~~  
11 ~~commissioner or the commissioner's authorized representative shall have~~  
12 ~~free and unimpeded access to all places of business and all business~~  
13 ~~records of a licensee pertinent to any proper inquiry in the administration~~  
14 ~~of this article 37. Any person in whom the enforcement of any provision~~  
15 ~~of this article 37 is vested has the power of a peace officer as to the~~  
16 ~~enforcement.~~

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

1 a bond.

2 **35-36-313. [Formerly 35-37-118] Unlawful acts - definition.**

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

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

9 (b) Willfully fail or refuse to render a true account of sales or  
10 storage or to make a settlement ~~thereon~~ ON SALES OR STORAGE or to pay  
11 for farm products received within the time and in the manner required by  
12 this ~~article 37~~ PART 3. Violation of this subsection (1)(b) ~~shall constitute~~  
13 IS a class 6 felony.

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

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

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

26 (f) Willfully convert to ~~his or her~~ THE PERSON'S own use or benefit  
27 the farm products of another. Violation of this subsection (1)(f) ~~shall~~

1 ~~constitute~~ IS theft, as defined in section 18-4-401.

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

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

8 (i) Interfere with or hinder an authorized representative of the  
9 commissioner while performing ~~his or her~~ THE AUTHORIZED  
10 REPRESENTATIVE'S duties under this ~~article 37~~ PART 3. Violation of this  
11 subsection (1)(i) ~~shall constitute~~ IS a class 1 misdemeanor.

12 (j) If licensed as a dealer or small-volume dealer, sell farm  
13 products for less than the current market price to any person with whom  
14 the dealer has ~~any~~ A financial connection, directly or indirectly, either as  
15 an owner of the corporate stock of a corporation, as a copartner, or in any  
16 other capacity, or sell any farm products out of the purchase price of  
17 which ~~said~~ THE dealer or small-volume dealer receives, directly or  
18 indirectly, ~~any~~ A portion ~~thereof~~ OF THE PURCHASE PRICE other than the  
19 commission allowed in ~~section 35-37-114~~ SECTION 35-36-310. Violation  
20 of this subsection (1)(j) ~~shall constitute~~ IS theft, as defined in section  
21 18-4-401.

22 (k) Act as a dealer, small-volume dealer, or agent and, with intent  
23 to defraud, make, draw, utter, or deliver ~~any~~ A check, draft, or order for  
24 the payment of money upon any bank or other depository to the owner for  
25 the purchase price of any farm products or any part ~~thereof~~ OF THE FARM  
26 PRODUCTS upon obtaining possession or control ~~thereof~~ OF THE FARM  
27 PRODUCTS, when at the time of the making, drawing, uttering, or delivery

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

9 (l) If acting as a dealer who has signed an affidavit in accordance  
10 with ~~section 35-37-105 (1)(a)(f)~~ SECTION 35-36-303 (1)(a)(I), fail to make  
11 payment in cash or by one of the other means specified in ~~section~~  
12 ~~35-37-106 (1)(e)~~ SECTION 35-36-304 (1)(c) for any transaction without  
13 first complying with the bonding requirements of ~~section 35-37-106~~  
14 SECTION 35-36-304. Violation of this subsection (1)(l) ~~shall constitute~~ IS  
15 a class 1 misdemeanor.

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

22 **35-36-314. [Formerly 35-37-121] Penalties for theft of farm**  
23 **products.** (1) If farm products are contracted for sale to an out-of-state  
24 purchaser, the purchaser ~~shall be~~ IS subject to the jurisdiction of the courts  
25 of this state in accordance with ~~the provisions of~~ section 13-1-124 (1)(a).  
26 The seller ~~shall be~~ IS entitled to all remedies at law in seeking the return  
27 of the farm products when the purchaser takes delivery of the products

1 but is unable or refuses to make payment for ~~said~~ THE products and the  
2 products have been physically removed to another state. The COURT  
3 SHALL GIVE THE action ~~shall be given~~ priority on the court's docket.

4 (2) If ~~any~~ A person purchases farm products in this state and  
5 removes the products to another state and issues a check in payment for  
6 those products knowing there are insufficient funds, as defined in section  
7 18-5-205 (1)(d), to pay for ~~said~~ THE products, the person commits theft  
8 of farm products and shall be punished as provided in section 18-4-401  
9 (2).

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

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

17 **11-35-101.5. Irrevocable letter of credit permitted -**  
18 **requirements.** (1) Where there is the requirement of either an  
19 irrevocable letter of credit or a bond as a condition to licensure in ~~sections~~  
20 ~~35-36-119 (1) and 35-37-106 (1)~~ SECTIONS 35-36-216 AND 35-36-304 or  
21 where an irrevocable letter of credit is permitted as an alternative to a  
22 surety bond, evidence of a savings account, deposit, or certificate of  
23 deposit meeting the requirements of section 11-35-101, as a condition to  
24 licensure or authority to conduct business or perform duties in this state,  
25 provided in sections 33-4-101 (1), 33-12-104 (1), ~~35-36-119 (1)(a),~~  
26 ~~35-37-105 (5), 35-37-106 (1)(a)~~ **35-36-216 (1)(a), 35-36-303 (5),**  
27 **35-36-304 (1)(a),** 37-91-107 (2), and 39-27-104 (2.1)(c), the requirement

1 shall be satisfied by an irrevocable letter of credit issued by a state or  
2 national bank or a state or federal savings and loan association doing  
3 business in this state. The requirement shall also be satisfied by an  
4 irrevocable letter of credit issued by the bank or banks for cooperatives  
5 that are organized pursuant to federal statutes and that serve the region in  
6 which the state of Colorado is located. Such letter of credit shall be in an  
7 amount specified by statute, if any, and shall name the appropriate state  
8 agency as beneficiary, in favor of the people of the state of Colorado.

9           **SECTION 5.** In Colorado Revised Statutes, **amend** 16-2.5-118  
10 as follows:

11           **16-2.5-118. Commissioner of agriculture.** The commissioner of  
12 agriculture or his or her designee is a peace officer while engaged in the  
13 performance of his or her duties whose authority shall be limited pursuant  
14 to the "~~Farm Products Act~~", ~~section 35-37-116~~, the "~~Commodity Handler~~  
15 ~~Act~~", ~~section 35-36-111~~, SECTIONS 35-36-103 AND 35-36-312 OF THE  
16 "COMMODITY HANDLER AND FARM PRODUCTS ACT"; the "Animal  
17 Protection Act", section 35-42-107 (4); and the "Pet Animal Care and  
18 Facilities Act", section 35-80-109 (6).

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

21           **18-1-202. Place of trial - applicability.** (7) (b) (II) The  
22 provisions of subsection (7)(b)(I) of this section ~~shall~~ apply to the  
23 following offenses:

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

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

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

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

8           **35-1-106. Powers and duties of commission.** (1) In addition to  
9 all other powers and duties conferred upon the commission by this article  
10 1, the commission has the following specific powers and duties:

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

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

18           **35-1-106.5. Inspection and consumer services cash fund -**  
19 **creation.** (1) All fees, fines, and penalties collected pursuant to articles  
20 12, 13, 14, 21, 33, 36, ~~37~~, and 60 of this title 35 and part 2 of article 43  
21 of this title 35 shall be transmitted to the state treasurer, who shall credit  
22 the same to the inspection and consumer services cash fund, which fund  
23 is hereby created in the state treasury. All interest derived from the  
24 deposit and investment of money in the fund shall be credited to the fund.  
25 At the end of any fiscal year, all unexpended and unencumbered money  
26 in the fund shall remain in the fund and shall not be credited or  
27 transferred to the general fund or any other fund or used for any purpose

1 other than to offset the costs of implementing, administering, and  
2 enforcing the provisions of articles 12, 13, 14, 21, 33, 36, 37, and 60 of  
3 this title 35 and part 2 of article 43 of this title 35. Money in the fund is  
4 subject to annual appropriation to the department for such purposes.

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

7 **35-1-107. Commissioner of agriculture - report - publications**  
8 **- deputy commissioner - rules.** (5) The commissioner is authorized to  
9 adopt all reasonable rules for the implementation of articles 12, 13, 14,  
10 21, 33, 36, 37, and 60 of this title 35 and part 2 of article 43 of this title  
11 35. Such rules may include, but are not limited to:

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

14 **35-61-108. Exportation of industrial hemp - processing, sale,**  
15 **manufacturing, and distribution - rules.** (4) (a) Because the  
16 unprocessed seeds of industrial hemp are included in the definition of  
17 "commodity" pursuant to section 35-36-102 ~~(5)~~ (7) of the "Commodity  
18 Handler AND FARM PRODUCTS Act", PART 1 OF article 36 of this title 35,  
19 a person acting as a commodity handler OR A SMALL-VOLUME  
20 COMMODITY HANDLER, as ~~that term is~~ THOSE TERMS ARE defined in  
21 section 35-36-102 ~~(6)~~ (8), with respect to the unprocessed seeds of  
22 industrial hemp, shall comply with the licensing requirements set forth in  
23 PART 2 OF article 36 of this title 35 and any rules promulgated pursuant to  
24 ~~that article~~ ARTICLE 36.

25 (b) Because industrial hemp is included in the definition of "farm  
26 products" pursuant to ~~section 35-37-103 (8)~~ SECTION 35-36-102 (14) of  
27 the "COMMODITY HANDLER AND Farm Products Act", ~~article 37~~ ARTICLE



1 36 of this title 35, a person acting as a dealer, small-volume dealer, or  
2 agent, as those terms are defined in ~~section 35-37-103~~ SECTION  
3 35-36-102, with respect to industrial hemp, shall comply with the  
4 licensing requirements set forth in ~~article 37~~ PART 3 OF ARTICLE 36 of this  
5 title 35 and any rules promulgated pursuant to ~~that article~~ ARTICLE 36.

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