

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

REREVISED

*This Version Includes All Amendments
Adopted in the Second House*

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, Cooke, Coram, Crowder, Garcia, Gardner, Holbert, Priola, Rankin, Smallwood, Tate, Woodward

House Committees

Rural Affairs & Agriculture
Finance
Appropriations

Senate Committees

Finance
Appropriations

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.

SENATE
3rd Reading Unamended
June 12, 2020

SENATE
Amended 2nd Reading
June 11, 2020

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**
14 **handler- rules.** (1) (a) ~~No~~ A person shall NOT act as a commodity
15 handler in this state without having first obtained a license from the
16 department.

17 (b) A SMALL-VOLUME COMMODITY HANDLER NEED NOT OBTAIN A
18 LICENSE.

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

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

26 (a) Operates a public warehouse in this state with a valid license
27 issued either by the United States department of agriculture or under the

1 ~~provisions of the~~ "United States Warehouse Act", 7 U.S.C. sec. 241 et
2 seq.;

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

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

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

3 The application ~~shall~~ MUST include the following information:

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

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

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

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

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

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

26 (3) THE COMMISSIONER SHALL REVOKE ANY LICENSE GRANTED AS
27 A RESULT OF AN APPLICATION THAT IS FOUND TO HAVE BEEN MADE

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

7 **35-36-204. [Formerly 35-36-106] Licenses - requirements -**
8 **rules.** (1) To receive or maintain a license, each applicant or licensee
9 ~~shall~~ FOR AN INITIAL OR RENEWAL LICENSE MUST satisfy the following
10 requirements:

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

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

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

1 applicant or licensee under this section. Any financial statement
2 submitted to the commissioner in support of a license application made
3 pursuant to ~~the provisions of this article 36 shall be~~ PART 2 IS confidential.

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

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

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

19 **35-36-205. [Formerly 35-36-107] Disciplinary powers - licenses.**

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

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

27 (b) Failed to place and keep the premises of the licensed business

1 in the manner required under this ~~article 36~~ PART 2;

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

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

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

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

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

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

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

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

1 thirty percent of the outstanding shares, is sufficient grounds for the
2 denial of a license.

3 **35-36-206. [Formerly 35-36-108] Bailment of commodities.**

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

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

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

16 **35-36-207. [Formerly 35-36-109] Credit sale contracts - rules.**

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

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

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

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

27 (d) The contract number;

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

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

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

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

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

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

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

1 COMMISSIONER'S authorized agents.

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

9 (a) Cash;

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

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

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

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

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

21 **35-36-208. [Formerly 35-36-110] Commodity grades**
22 **established - rules.** The department may promulgate rules concerning
23 commodity grades in accordance with the standards established by the
24 United States department of agriculture as the official grain standards of
25 the United States government.

26 **35-36-209. [Formerly 35-36-112] Negotiable warehouse**
27 **receipts - rules.** (1) A negotiable warehouse receipt must be either a

1 paper or an electronic document. At no time may a paper receipt and an
2 electronic receipt represent the same lot of the commodity. A licensee
3 may issue warehouse receipts by use of a written warehouse receipt
4 system, an electronic warehouse receipt system, or both.

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

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

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

19 **35-36-210. [Formerly 35-36-113] Use of scale tickets and**
20 **negotiable warehouse receipts.** (1) It is unlawful to issue paper
21 negotiable warehouse receipts other than those furnished by the
22 department. ~~The~~ A licensee shall issue these receipts consecutively, as
23 numbered, and each receipt must state the date on which it is actually
24 issued.

25 (2) Nothing in this ~~article 36 shall be construed to prevent~~ PART
26 2 PREVENTS the issuance of nonnegotiable scale tickets or other
27 nonnegotiable ~~evidences~~ EVIDENCE of a similar nature showing the date

1 on which the commodities were received, the quantities received, and the
2 condition of the commodities upon their delivery.

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

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

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

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

5 **35-36-211. [Formerly 35-36-114] Commodity handler records**
6 **- separate and distinct - time of maintenance - definition.** (1) A
7 commodity handler ~~OR SMALL-VOLUME COMMODITY HANDLER~~ operating
8 another business in conjunction with, or in proximity to, the handler's
9 commodity handling business shall keep a complete set of records for the
10 commodity handling business, entirely separate and distinct from the
11 accounts and records of that other business. The deposits of commodities
12 for the account of another business or for commodities owned by the
13 commodity handler ~~OR SMALL-VOLUME COMMODITY HANDLER~~ shall be
14 entered in the books of the commodity handler ~~OR SMALL-VOLUME~~
15 ~~COMMODITY HANDLER~~ in the same manner as those of other depositors.
16 For the purpose of this section, "other business" ~~shall mean~~ MEANS any
17 other separate and legally established enterprise that is distinct and
18 separate from the legal and financial transactions of the commodity
19 handling business.

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

1 ~~shall be retained by the commodity handler~~ for a period of at least three
2 years after the date of cancellation.

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

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

26 (5) A settlement sheet shall be maintained for each owner and
27 shall contain the following: Owner's name; scale ticket numbers; total

1 receipts; total withdrawals; test weight; and grade, if assigned. A copy of
2 a current settlement sheet shall be provided TO the owner upon request.

3 **35-36-212. [Formerly 35-36-115] Warehouse operator's**
4 **liability for disposal of tainted commodities.** (1) A warehouse operator
5 ~~shall be~~ IS liable for any loss or deterioration of commodities in a public
6 warehouse caused by the warehouse operator's failure to exercise
7 reasonable care of the commodities.

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

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

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

26 **35-36-213. [Formerly 35-36-116] Enforcement - inspection of**
27 **commodity handlers' property - confidentiality.** (1) The department

1 has the power to inspect commodity handlers' places of business. The
2 department shall investigate any complaint concerning the operation of
3 any commodity handler or any person attempting or offering to act as
4 such A COMMODITY HANDLER, subject to the provisions of this article 36
5 PART 2.

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

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

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

1 appear and testify or produce documentary evidence. Failure to obey such
2 an order of the court ~~shall be~~ IS punishable as a contempt of court.

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

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

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

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

24 (9) (a) If the commissioner determines, after concluding an
25 investigation on any complaint, that reasonable grounds exist to believe
26 that a licensee has violated ~~any of the provisions of this article 36~~ PART
27 2, the commissioner shall notify the licensee that the complaint is valid

1 and shall inform the licensee of ~~his or her~~ THE LICENSEE'S opportunity to
2 request a hearing, in writing, on the complaint within ten days after the
3 date of the notice.

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

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

1 the complaint.

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

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

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

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

27 (d) Nothing in this section ~~shall be construed as limiting~~ LIMITS

1 the power of the commissioner to revoke or suspend a license when ~~he or~~
2 ~~she~~ THE COMMISSIONER is satisfied ~~of the existence of any~~ THAT ONE OR
3 MORE of the ~~facts~~ ACTS specified in ~~section 35-36-123~~ SECTION 35-36-217
4 WAS COMMITTED.

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

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

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

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

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

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

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

26 **35-36-214. [Formerly 35-36-117] Procedure on shortage -**
27 **refusal to submit to inspection.** (1) Whenever it appears probable after

1 investigation that a licensed warehouse operator does not possess
2 sufficient commodities to cover the outstanding negotiable warehouse
3 receipts, scale tickets, or other ~~evidences~~ EVIDENCE of storage liability
4 issued or assumed by the warehouse operator, the department may give
5 notice to the warehouse operator that ~~he or she~~ THE WAREHOUSE
6 OPERATOR is required to do all or any of the following:

- 7 (a) Cover the shortage;
- 8 (b) Give an additional bond or irrevocable letter of credit;
- 9 (c) Submit to such inspection as the department may deem
10 necessary.

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

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

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

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

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

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

21 (4) The department shall retain possession of the commodity in
22 the public warehouse and of the books, papers, records, and property of
23 the warehouse operator until such time as the warehouse operator or the
24 warehouse operator's bond or irrevocable letter of credit has satisfied the
25 claims of all holders of negotiable warehouse receipts or other ~~evidences~~
26 EVIDENCE of deposits. In case the shortage exceeds the amount of the
27 bond or irrevocable letter of credit, the warehouse operator's bond or

1 irrevocable letter of credit ~~shall satisfy~~ SATISFIES the claims pro rata.
2 Nothing in this section ~~shall be construed to prevent~~ PREVENTS the
3 department from complying with an order of a court of competent
4 jurisdiction to surrender possession.

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

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

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

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

27 (II) Determine the disposition of the commodities, books, papers,

1 records, and property that were in the public warehouse and seized
2 pursuant to this ~~article 36~~ PART 2.

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

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

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

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

27 **35-36-215. [Formerly 35-36-118] Inspection fees.** (1) The state

1 ~~agricultural~~ commission, after conferring with interested industry groups,
2 is authorized to fix, assess, and collect fees for the inspection of
3 commodity ~~handlers~~ OR SMALL-VOLUME COMMODITY HANDLERS.

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

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

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

23 (b) The bond or irrevocable letter of credit must be conditioned
24 upon compliance with this ~~article 36~~ PART 2 AND SECTION 35-36-104 and
25 upon the faithful and honest handling of commodities in accordance with
26 this ~~article 36~~ PART 2 AND SECTION 35-36-104 and must cover any
27 inspection fees due the department of ~~agriculture~~ by the commodity

1 handler and all costs and reasonable attorney fees incident to any suit
2 upon the bond or irrevocable letter of credit. The bond or irrevocable
3 letter of credit must be to the department of agriculture in favor of every
4 producer or owner and, in the instance of a bond, must remain in full
5 force and effect until cancelled by the surety upon thirty days' prior
6 written notice to the commissioner.

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

14 (II) The surety on the bond or the issuer of the letter of credit is
15 not liable to pay any claim pursuant to ~~any~~ AN action brought under this
16 ~~article 36~~ PART 2 if the action is not commenced within ~~one hundred~~
17 ~~eighty~~ FIVE HUNDRED FORTY-EIGHT days, WHICH IS APPROXIMATELY
18 EIGHTEEN MONTHS, after the date of the transaction, as that term is
19 ~~defined~~ DESCRIBED in ~~section 35-36-116(13)~~ SECTION 35-36-213 (13), on
20 which the claim is based, or the date of the loss, 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 a
23 new bond or irrevocable letter of credit, and the commodity handler's
24 failure to file the new bond or irrevocable letter of credit within ten days
25 after the commencement of ~~said~~ THE action constitutes grounds for the
26 suspension or revocation of ~~his or her~~ THE COMMODITY HANDLER'S
27 license.

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

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

20 (3) THIS SECTION DOES NOT APPLY TO SMALL-VOLUME
21 COMMODITY HANDLERS.

22 **35-36-217. [Formerly 35-36-123] Unlawful acts - definition.**

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

25 (a) Make fraudulent charges or returns for the handling, sale, or
26 storage or for the rendering of any service in connection with the
27 handling, sale, or storage of any commodities. Violation of this subsection

- 1 (1)(a) ~~shall constitute~~ IS a class 6 felony.
- 2 (b) Willfully fail or refuse to render a true account of sales or
3 storage or to make a settlement ~~thereon~~ ON SALES OR STORAGE or to pay
4 for commodities received on the date and in the manner specified in the
5 contract with the owner or, if no date is specified in the contract or on
6 delivery, within thirty days after the date of delivery or the date on which
7 the person took possession of the commodities. Violation of this
8 subsection (1)(b) ~~shall constitute~~ IS a class 6 felony.
- 9 (c) Intentionally make false or misleading statements as to the
10 market conditions for commodities or false or misleading statements as
11 to the condition, quality, or quantity of commodities received, handled,
12 sold, or stored. Violation of this subsection (1)(c) ~~shall constitute~~ IS a
13 class 6 felony.
- 14 (d) Engage in fictitious sales, in collusion, or in unfair practices
15 to defraud the owners. Violation of this subsection (1)(d) ~~shall constitute~~
16 IS a class 6 felony.
- 17 (e) Act as a commodity handler without having obtained a license
18 or act as a commodity handler without having filed a surety bond or
19 irrevocable letter of credit, as provided in this ~~article 36~~ PART 2. Violation
20 of this subsection (1)(e) ~~shall constitute~~ IS a class 6 felony.
- 21 (f) Willfully convert to ~~his or her~~ THE PERSON'S own use or benefit
22 the commodities of another. Violation of this subsection (1)(f) ~~shall~~
23 ~~constitute~~ IS theft, as defined in section 18-4-401.
- 24 (g) Commit fraud or deception in the procurement or attempted
25 procurement of a license. Violation of this subsection (1)(g) ~~shall~~
26 ~~constitute~~ IS a class 1 misdemeanor.
- 27 (h) Fail to comply with any lawful order of the commissioner

1 concerning the administration of this ~~article 36~~ PART 2. Violation of this
2 subsection (1)(h) ~~shall constitute~~ IS a class 1 misdemeanor.

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

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

22 (k) Sell commodities for less than the current market price to ~~any~~
23 A person with whom ~~he or she~~ THE PERSON has any financial connection,
24 directly or indirectly, either as an owner of the corporate stock of a
25 corporation, as a copartner, or in any other capacity, or sell any
26 commodities out of the purchase price of which ~~said~~ THE COMMODITY
27 handler OR SMALL-VOLUME COMMODITY HANDLER, directly or indirectly,

1 retains any portion ~~thereof~~ OF THE PURCHASE PRICE other than the
2 commission allowed and reported pursuant to ~~section 35-37-114~~ SECTION
3 35-36-310. Violation of this subsection (1)(k) ~~shall constitute~~
4 CONSTITUTES theft, as defined in section 18-4-401.

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

20 PART 3

21 FARM PRODUCTS

22 **35-36-301. [Formerly 35-37-102] Legislative declaration.** The
23 general assembly hereby declares that farm products are commodities
24 affected with a public interest and thus should be regulated for the
25 protection of both the producer and the consumer.

26 **35-36-302. [Formerly 35-37-104] Application for license - rules.**

27 (1) ~~No~~ A person shall NOT act as a dealer, small-volume dealer, or agent

1 without having obtained a license as provided in this ~~article 37~~ PART 3.
2 Every person acting as a dealer, small-volume dealer, or agent shall file
3 an application in writing with the commissioner for a license to transact
4 the business of dealer, small-volume dealer, or agent, and the application
5 ~~shall~~ MUST be accompanied by the license fee provided for in ~~section~~
6 ~~35-37-105~~ SECTION 35-36-303 for each specified class of business.

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

21 (3) In addition to the general requirements applicable to all classes
22 of applications, as set forth in this section, each application for an agent's
23 license ~~shall~~ MUST include such information as the commissioner may
24 consider proper or necessary, and the application ~~shall~~ MUST include the
25 name and address of the applicant and the name and address of each
26 dealer or small-volume dealer represented or sought to be represented by
27 ~~said~~ THE agent and the written endorsement or nomination of the dealer

1 or small-volume dealer. ~~No~~ A person shall NOT be licensed as an agent
2 unless all of the agent's principals are licensed under this ~~article 37~~ PART
3 3.

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

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

27 (6) Any person licensed under ~~article 36~~ PART 2 of this ~~title 35~~

1 ARTICLE 36 may apply for a license as a dealer or small-volume dealer
2 without paying the license fee otherwise required by ~~section 35-37-105~~
3 SECTION 35-36-303.

4 **35-36-303. [Formerly 35-37-105] License fee - renewal - rules.**

5 (1) (a) For filing the application described in ~~section 35-37-104~~ SECTION
6 35-36-302, each applicant for a license in each of the following categories
7 shall pay to the commissioner a fee as determined by the ~~agricultural~~
8 commission, which fee shall be transmitted to the state treasurer for credit
9 to the inspection and consumer services cash fund created in section
10 35-1-106.5:

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

16 (II) Agents; and

17 (III) Small-volume dealers.

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

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

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

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

16 (5) Upon the failure of an applicant to file a bond or an
17 irrevocable letter of credit meeting the requirements of section
18 11-35-101.5, within ninety days ~~of~~ AFTER the date of application, the
19 application will be rendered void, and the license fee will not be
20 refunded. Any subsequent application for a license ~~shall require~~ REQUIRES
21 a new license fee.

22 (6) Whenever the commissioner deems it appropriate, the
23 commissioner may require ~~of any~~ A LICENSEE OR AN applicant for an
24 initial OR RENEWAL license ~~any applicant for a renewal of a license, or any~~
25 ~~licensee the submission of~~ TO SUBMIT a financial statement or an audit
26 prepared ~~by a certified public accountant~~ ACCORDING TO GENERALLY
27 ACCEPTED ACCOUNTING PRINCIPLES or any other information to determine

1 whether the person is in an adequate financial position to carry out ~~his or~~
2 ~~her~~ THE PERSON'S duties as a licensee.

3 **35-36-304. [Formerly 35-37-106] Bonds and irrevocable letters**
4 **of credit - exemptions.** (1) (a) Before ~~any~~ THE COMMISSIONER MAY
5 ISSUE A license ~~is issued~~ to ~~any~~ A dealer, the applicant shall file with the
6 commissioner IN THE SUM OF NOT LESS THAN TWO THOUSAND DOLLARS
7 NOR MORE THAN ONE MILLION DOLLARS, AT THE DISCRETION OF THE
8 COMMISSIONER:

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

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

16 (b) The bond or irrevocable letter of credit must be conditioned
17 upon compliance with this ~~article 37~~ PART 3 AND SECTION 35-36-104 and
18 upon the faithful and honest handling of farm products in accordance with
19 this ~~article 37~~ PART 3 and shall cover any fees due the department of
20 ~~agriculture~~ by the dealer and all costs and reasonable attorney fees
21 incident to any suit upon the bond or irrevocable letter of credit. The bond
22 or irrevocable letter of credit must be to the department of ~~agriculture~~ in
23 favor of every producer, dealer, small-volume dealer, or owner and, in the
24 instance of a bond, must remain in full force and effect until cancelled by
25 the surety upon thirty days' prior written notice to the commissioner.

26 (c) (I) ~~Any~~ A producer, owner, small-volume dealer, or other
27 dealer within the state of Colorado claiming to be injured by the fraud,

1 deceit, or willful negligence of, or failure to comply with this ~~article 37~~
2 PART 3 OR SECTION 35-36-104 by, ~~any~~ A dealer may request the
3 department, ~~of agriculture~~, as beneficiary, to demand payment on the
4 irrevocable letter of credit or surety bond to recover the damages caused
5 by the fraud, deceit, willful negligence, or failure to comply. ~~with this~~
6 ~~article 37.~~

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

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

22 (e) ~~No~~ THE COMMISSIONER SHALL NOT REQUIRE A bond or
23 irrevocable letter of credit ~~shall be required of~~ FROM a dealer who pays
24 for farm products in cash or with a bank-certified check, a bank cashier's
25 check, an irrevocable electronic funds transfer, or a money order at the
26 time the dealer obtains from the owner ~~thereof~~ OF THE FARM PRODUCTS
27 possession or control of the farm products, or of an applicant for a license

1 or a licensee operating under a bond required by the United States to
2 secure the performance of ~~his or her~~ THE APPLICANT'S OR LICENSEE'S
3 obligations; except that the bond ~~shall~~ MUST include all obligations
4 pertaining to Colorado farm products, and THE DEALER SHALL FURNISH
5 documentary evidence ~~shall be furnished~~ to the commissioner that the
6 bond required by the United States is in full force and effect.

7 (f) The bond or irrevocable letter of credit required by ~~section~~
8 ~~35-36-119~~ ~~shall~~ SECTION 35-36-216 MUST apply to the activities as a
9 dealer of ~~any~~ A person licensed pursuant to ~~article 36~~ PART 2 of this title
10 ~~35~~ ARTICLE 36. The persons ~~shall~~ ARE also be subject to ~~the provisions of~~
11 this section and ~~section 35-37-107~~ SECTION 35-36-305.

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

22 **35-36-305. [Formerly 35-37-107] Investigations, hearings, and**
23 **examinations.** (1) For the purpose of enforcing ~~the provisions of this~~
24 ~~article 37~~ PART 3, the commissioner may receive complaints from persons
25 against ~~any~~ A dealer, small-volume dealer, agent, or person assuming or
26 attempting to act as ~~such~~ A DEALER, SMALL-VOLUME DEALER, OR AGENT
27 and, upon the receipt of a complaint, may make any and all necessary

1 investigations relative to the complaint.

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

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

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

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

25 (4) The commissioner may examine the ledgers, books, accounts,
26 memoranda, and other documents and the farm products, scales,
27 measures, and other items in connection with the business of ~~any~~ A

1 licensee relating to whatever transactions may be involved.

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

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

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

21 (8) (a) If the commissioner determines, after concluding an
22 investigation on ~~any~~ A complaint, that reasonable grounds exist to believe
23 that a licensee has violated ~~any of the provisions of this article 37~~ PART
24 3 OR SECTION 35-36-104, the commissioner shall notify the licensee that
25 the complaint is valid and ~~shall~~ inform the licensee of ~~his or her~~ THE
26 LICENSEE'S opportunity to request a hearing, in writing, on the complaint
27 within ten days after the date of the notice.

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

11 (c) The commissioner shall conduct the hearing pursuant to ~~the~~
12 ~~provisions of~~ section 24-4-105. Thereafter, the commissioner shall enter
13 in ~~his or her~~ THE COMMISSIONER'S office a decision specifying the
14 relevant facts established at the hearing. If the commissioner determines
15 from the facts specified that the licensee has not violated ~~any of the~~
16 ~~provisions of this article 37~~ PART 3 OR SECTION 35-36-104, the
17 COMMISSIONER SHALL DISMISS THE complaint. ~~shall be dismissed.~~ If the
18 commissioner determines from the facts specified that the licensee has
19 violated ~~any of the provisions of this article 37~~ PART 3 OR SECTION
20 35-36-104, and that the licensee has not yet made complete restitution to
21 the person complaining, the commissioner shall determine the amount of
22 damages, if any, to which the person is entitled as the result of the
23 violation and enter an order directing the offender to pay the person
24 complaining the amount OF DAMAGES on or before the date fixed in the
25 order. THE COMMISSIONER SHALL CAUSE TO BE FURNISHED a copy of the
26 decision ~~shall be furnished~~ to all the respective parties to the complaint.

27 (9) As a result of the hearing, the commissioner may also enter

1 ~~any~~ AN order suspending or revoking the license of a licensee or may
2 place the licensee on probation if the commissioner determines that the
3 licensee has committed any of the unlawful acts specified in ~~section~~
4 ~~35-37-118~~ SECTION 35-36-313 or that the licensee has violated ~~any of the~~
5 ~~provisions of this article 37~~ PART 3 OR SECTION 35-36-104.

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

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

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

1 decision ~~shall~~ TO be furnished to the licensee.

2 (d) Nothing in this section ~~shall be construed as limiting~~ LIMITS
3 the power of the commissioner to revoke or suspend a license when
4 satisfied of the existence of any of the facts specified in ~~section~~
5 ~~35-37-118~~ SECTION 35-36-313.

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

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

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

26 (b) On delayed payment transactions, on the contractual date of
27 payment, or, if there is no contractual date of payment, thirty days

1 following the transfer of title.

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

8 **35-36-306. [Formerly 35-37-108] Disciplinary powers - licenses.**

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

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

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

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

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

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

27 (f) Failed to comply with ~~any~~ A lawful order of the commissioner

1 concerning the administration of this ~~article 37~~ PART 3; OR

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

5 (2) All proceedings concerning the denial, refusal to renew,
6 revocation, or suspension of a license or the placing of a licensee on
7 probation shall be conducted pursuant to ~~the provisions of section~~
8 ~~35-37-107~~ SECTION 35-36-305 and article 4 of title 24.

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

17 **35-36-307. [Formerly 35-37-111] Credit sale contracts - rules.**

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

23 (a) The type and quantity of farm products purchased and the date
24 of 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 dealer or small-volume dealer or the authorized agent

1 ~~thereof~~ OF THE DEALER OR SMALL-VOLUME DEALER;

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

4 (e) 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 dealer or small-volume
8 dealer.

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

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

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

26 (5) A DEALER OR SMALL-VOLUME DEALER ISSUING CREDIT SALE
27 CONTRACTS SHALL MAINTAIN POSITIVE WORKING CAPITAL AND A CURRENT

1 RATIO EQUAL TO OR GREATER THAN ONE-TO-ONE AND RESERVES IN AN
2 AMOUNT EQUALING OR EXCEEDING ONE HUNDRED PERCENT OF THE VALUE
3 OF ALL OF THAT DEALER'S OR SMALL-VOLUME DEALER'S OPEN CREDIT SALE
4 CONTRACTS, WHICH VALUE SHALL BE DETERMINED WITH REFERENCE TO
5 THE DAILY BID PRICE. THE RESERVES MAY BE IN THE FORM OF ANY ONE OR
6 A COMBINATION OF THE FOLLOWING:

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

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

- 20 (a) The name and address of the consignor;
- 21 (b) The date received;
- 22 (c) The condition and quantity upon arrival;
- 23 (d) The date of the sale for the account of the consignor;
- 24 (e) The price for which sold;
- 25 (f) An itemized statement of the charges to be paid by the
26 consignor in connection with the sale;
- 27 (g) The names and addresses of the purchasers if the dealer has

1 ~~any~~ A financial interest in the business of the purchasers or if the
2 purchasers have ~~any~~ A financial interest in the business of the dealer,
3 directly or indirectly, as a holder of the other's corporate stock, as a
4 copartner, as a lender or borrower of money to or from the other, or in any
5 other capacity;

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

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

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

19 **35-36-310. [Formerly 35-37-114] Daily reports and settlements.**

20 (1) When requested by ~~his or her~~ A DEALER'S consignor, ~~a~~ THE dealer,
21 before the close of the next business day following the sale of any farm
22 products consigned to the dealer, shall transmit or deliver to the owner or
23 consignor a true written report of the sale, showing the amount sold and
24 the selling price. THE DEALER SHALL MAKE remittance in full TO THE
25 CONSIGNER of the amount realized from the sale, including all collections,
26 overcharges, and damages, less the agreed commission and other charges
27 together with a complete account of sales ~~shall be made to the consignor~~

1 within ten days after the receipt of the money by the dealer unless
2 otherwise agreed to in writing. In the account, the names and addresses
3 of purchasers need not be given, except as required in ~~section 35-37-112~~
4 SECTION 35-36-308.

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

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

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

1 after the final sale of the consignment, unless otherwise agreed to in
2 writing by the consignor.

3 **35-36-312. [Formerly 35-37-116] Enforcement.** ~~(1) The~~
4 ~~commissioner shall be the enforcing authority of this article 37, and the~~
5 ~~commissioner or the commissioner's authorized representative shall have~~
6 ~~free and unimpeded access to all places of business and all business~~
7 ~~records of a licensee pertinent to any proper inquiry in the administration~~
8 ~~of this article 37. Any person in whom the enforcement of any provision~~
9 ~~of this article 37 is vested has the power of a peace officer as to the~~
10 ~~enforcement.~~

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

23 **35-36-313. [Formerly 35-37-118] Unlawful acts - definition.**

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

26 (a) Make fraudulent charges or returns for the handling, sale, or
27 storage or for the rendering of any service in connection with the

1 handling, sale, or storage of ~~any~~ farm products. Violation of this
2 subsection (1)(a) ~~shall constitute~~ IS a class 6 felony.

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

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

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

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

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

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

26 (h) Fail to comply with ~~any~~ A lawful order of the commissioner
27 concerning the administration of this ~~article 37~~ PART 3. Violation of this

1 subsection (1)(h) ~~shall constitute~~ IS a class 1 misdemeanor.

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

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

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

1 payment of the check, draft, or order. Violation of this subsection (1)(k)
2 ~~shall constitute~~ IS fraud by check, as defined in section 18-5-205.

3 (l) If acting as a dealer who has signed an affidavit in accordance
4 with ~~section 35-37-105 (1)(a)(I)~~ SECTION 35-36-303 (1)(a)(I), fail to make
5 payment in cash or by one of the other means specified in ~~section~~
6 ~~35-37-106 (1)(e)~~ SECTION 35-36-304 (1)(c) for any transaction without
7 first complying with the bonding requirements of ~~section 35-37-106~~
8 SECTION 35-36-304. Violation of this subsection (1)(l) ~~shall constitute~~ IS
9 a class 1 misdemeanor.

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

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

25 (2) If ~~any~~ A person purchases farm products in this state and
26 removes the products to another state and issues a check in payment for
27 those products knowing there are insufficient funds, as defined in section

1 18-5-205 (1)(d), to pay for ~~said~~ THE products, the person commits theft
2 of farm products and shall be punished as provided in section 18-4-401
3 (2).

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

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

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

1 amount specified by statute, if any, and shall name the appropriate state
2 agency as beneficiary, in favor of the people of the state of Colorado.

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

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

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

15 **18-1-202. Place of trial - applicability.** (7) (b) (II) The
16 provisions of subsection (7)(b)(I) of this section ~~shall~~ apply to the
17 following offenses:

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

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

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

27 **SECTION 8.** In Colorado Revised Statutes, 35-1-106, **amend**

1 (1)(p)(I) as follows:

2 **35-1-106. Powers and duties of commission.** (1) In addition to
3 all other powers and duties conferred upon the commission by this article
4 1, the commission has the following specific powers and duties:

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

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

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

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

1 **35-1-107. Commissioner of agriculture - report - publications**
2 **- deputy commissioner - rules.** (5) The commissioner is authorized to
3 adopt all reasonable rules for the implementation of articles 12, 13, 14,
4 21, 33, 36, ~~37~~, and 60 of this title 35 and part 2 of article 43 of this title
5 35. Such rules may include, but are not limited to:

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

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

18 (b) Because industrial hemp is included in the definition of "farm
19 products" pursuant to ~~section 35-37-103 (8)~~ SECTION 35-36-102 (14) of
20 the "COMMODITY HANDLER AND Farm Products Act", ~~article 37~~ ARTICLE
21 36 of this title 35, a person acting as a dealer, small-volume dealer, or
22 agent, as those terms are defined in ~~section 35-37-103~~ SECTION
23 35-36-102, with respect to industrial hemp, shall comply with the
24 licensing requirements set forth in ~~article 37~~ PART 3 OF ARTICLE 36 of this
25 title 35 and any rules promulgated pursuant to ~~that article~~ ARTICLE 36.

26 **SECTION 12. Safety clause.** The general assembly hereby finds,

- 1 determines, and declares that this act is necessary for the immediate
- 2 preservation of the public peace, health, or safety.