

DEPARTMENT OF AGRICULTURE

Inspection and Consumer Services Division

ADMINISTRATION AND ENFORCEMENT OF THE COMMODITY HANDLER AND FARM PRODUCTS ACT, SECTIONS 35-36-101 THROUGH 314, C.R.S.

8 CCR 1202-11

[Editor's Notes follow the text of the rules at the end of this CCR Document.]

Part 1 Legal Authority

- 1.1. Section 35-36-103(1)(a), C.R.S.

Part 2 Definitions and Terms

- 2.1. "The Act" means the Commodity Handler and Farm Products Act; Title 35, Article 36 of the Colorado Revised Statutes.
- 2.2. "Cash buyer" means a dealer who signs an affidavit stating that the dealer will make payment for each transaction in cash or with a bank-certified check, a bank cashier's check, an irrevocable electronic funds transfer, or a money order at the time the dealer obtains possession or control of the farm products from the owner.
- 2.3. "Commissioner" means the Commissioner of the Colorado Department of Agriculture
- 2.4. "Condition" means the process of increasing the storage life of a commodity and minimizing spoilage and quality loss.
- 2.5. "Department" means the Colorado Department of Agriculture
- 2.6. "Commodity Handler" means a person: (I) engaged in buying any commodities from the owner for processing or resale; (II) engaged in receiving and taking possession of any commodities from the owner for storage or safekeeping; (III) engaged in soliciting or negotiating sales of commodities between the vendor and purchaser respectively; (IV) who receives on consignment or solicits from the owner of a commodity any kind of commodity for sale on commission on behalf of the owner, who accepts any commodity in trust from the owner of the commodity for the purpose of resale, or who sells or offers for sale on commission any commodity or in any way handles any commodity for the account of the owner of the commodity; or (V) is engaged in buying any commodity from the owner of the commodity for the commercial feeding of livestock that are owned wholly or in part by another, at an animal feeding operation with a capacity of more than two thousand five hundred head of livestock. Unless otherwise specified, a commodity handler means a public warehouse and public warehouse operator. "Commodity handler" does not include: (I) A bona fide retail grocery merchant or restaurateur having a fixed or established place of business in Colorado if the use of commodities by the person is directly related to the operation of the person's retail grocery or restaurant; or (II) A producer as defined in the "Colorado Cottage Foods Act", section 25-4-1614 (9)(c), who earns net revenues of ten thousand dollars or less per calendar year from the sale of each eligible food product.

- 2.7. “Dealer” means a person: (I) engaged in buying any farm products from the owner for processing or resale; (II) engaged in receiving and taking possession of any farm products from the owner for storage or safekeeping; (III) engaged in soliciting or negotiating sales of farm products between the vendor and purchaser respectively; (IV) who receives on consignment or solicits from the owner of a farm product any kind of farm product for sale on commission on behalf of the owner, who accepts any farm product in trust from the owner of the farm product for the purpose of resale, or who sells or offers for sale on commission any farm product or in any way handles any farm product for the account of, or as an agent of, the owner of the farm product; or (V) is engaged in buying any farm products or commodities from the owner of the farm products or commodities for the commercial feeding of livestock that are owned wholly or in part by another, at an animal feeding operation with a capacity of more than two thousand five hundred head of livestock. “Dealer” does not include: (I) A bona fide retail grocery merchant or restaurateur having a fixed or established place of business in Colorado if the use of farm products by the person is directly related to the operation of the person's retail grocery or restaurant; or (II) A producer as defined in the “Colorado Cottage Foods Act”, section 25-4-1614 (9)(c), who earns net revenues of ten thousand dollars or less per calendar year from the sale of each eligible food product.
- 2.8. “Financial statement” means a statement prepared according to generally accepted accounting principles (GAAP) that accurately presents the financial condition of the applicant or licensee and that includes, at a minimum, a balance sheet and statement of income.
- 2.9. “Financial assurance” means the mechanisms used by a licensee to demonstrate that the funds necessary to meet the cost of closure, post closure maintenance and monitoring, and corrective action will be available whenever they are needed.
- 2.10. “Licensee” unless specifically clarified with the rule, means a commodity handler or farm products dealer, including public warehouse operator, small-volume dealer, or cash buyer that must be licensed.
- 2.11. “Public warehouse” - means an elevator, mill, warehouse, or other structure in which commodities are received from one or more members of the public for storage.
- 2.12. “Small-volume commodity handler” means a person who has a fixed or established place of business in Colorado; engages in commodities handling; buys less than \$250,000 worth of commodities and farm products per year from owners for processing or resale and does not purchase commodities for commercial feeding of livestock.
- 2.13. “Small-volume dealer” means a person who does not qualify as a “dealer” under section 35-36-102, (12)(a)(II) to 12(a)(V), C.R.S.; has a fixed or established place of business in Colorado; buys less than twenty thousand dollars worth of farm products or commodities, in aggregate, per year from the owners for processing or resale; and does not purchase farm products for commercial feeding of livestock.
- 2.14. “Spoilage” means grain with quality deterioration due to moisture migrations, mold, insect damage, heat damage, or other factors.
- 2.15. “Quality and quantity” means the legal, operational, managerial, and financial liability of the warehouse operator for any grain obligation(s), including company-owned grain, handled or stored by the warehouse operator.

Part 3 Initial and Renewal License Application Requirements and Documentation for a Commodity Handlers (Including a Public Warehouse)

- 3.1. No person shall act as a commodity handler in the state of Colorado without having first obtained a license from the Department. The annual expiration date for a license is the last day of December.
- 3.2. A new applicant must submit the most recent financial statement available when submitting an application for a new license. Once licensed, a commodity handler must submit an annual financial statement within 90 calendar days from the end of the commodity handler's fiscal year.
 - 3.2.1. A small-volume commodity handler is exempt from the licensure requirements so long as they do not enter into credit-sale contracts.
- 3.3. In addition to the application requirements set forth in the Act, a commodity handler applicant or licensee, including a public warehouse, must submit the following information with any new license application or application for renewal:
 - 3.3.1. The original copy of the surety bond or irrevocable letter of credit;
 - 3.3.2. An annual report on the status of all credit sales contracts that are currently open or have been completed or cancelled within one year from the date of the report. The report must contain the following information for each credit sales contract:
 - Name and contact information of the producer or owner;
 - Contract number;
 - Contract dollar amount;
 - Date the contract was signed by both parties;
 - Date the contract ends;
 - Status of the contract: open or closed; and
 - Aggregate total of outstanding payments
 - 3.3.3. A financial statement, consisting at a minimum of a balance sheet and income statement, that is prepared according to generally accepted accounting principles (GAAP);
 - 3.3.4. A public warehouse must submit evidence of minimum provisional insurance coverage;
 - 3.3.5. A public warehouse must submit a schedule of charges with a new license application. An amended schedule of charges must be submitted to the Department any time a change occurs. The schedule must contain: rates to be charged for storage, receiving, loadout, cleaning, drying, and any other charges applicable to the conditioning or processing of grain delivered to the warehouse. The schedule of charges also must set forth any minimum charges, shrinks, or time limits applicable to grain storage accounts.
 - 3.3.6. In addition to complying with all application requirements set forth in the Act, an applicant for a public warehouse license must demonstrate the following conditions before being issued a license:

- The flooring is steel or concrete, except for wooden elevators and raised aeration floors;
- The sidewalls are rigid and self-supporting;
- The space is immobile;
- There is adequate means of entrance and exit to the storage space; and
- The space is otherwise capable of maintaining the quantity and quality of grain stored in it.

Part 4 Initial and Renewal License Application Requirements and Documentation for a Farm Product Dealer (Includes Cash Buyer, and Small-Volume Dealer)

- 4.1. No person shall act as a farm product dealer in the state of Colorado without having first obtained a license from the Department. The annual expiration date for a license is the last day of December.
- 4.2. In addition to the application requirements set forth in the Act, a farm products dealer applicant or licensee must submit the following information with any new license application or application for renewal:
 - 4.2.1. The original copy of the surety bond or irrevocable letter of credit. This requirement is not applicable to a cash buyer or small volume dealer; and
 - 4.2.2. A signed Cash Buyer Bond Declaration for any applicant or licensee applying to be a cash buyer.
- 4.3. A farm product dealer who enters into credit sales contracts must submit the following additional documentation with any new license application or application for renewal:
 - 4.3.1. A financial statement consisting, at a minimum of a balance sheet and income statement that are prepared according to generally accepted accounting principles (GAAP);
 - 4.3.2. A new applicant must submit the most recent financial statement available when submitting an application for a new license. Once licensed, a farm products dealer must submit an annual financial statement within 90 calendar days from the end of the farm products dealer fiscal year;
 - 4.3.3. An annual report on the status of all credit-sale contracts that are currently open or have been completed or cancelled within one year from the date of the report. The report must contain the following information for each credit-sale contract:
 - Name and contact information of the producer or owner;
 - Contract number;
 - Contract dollar amount;
 - Date the contract was signed by both parties;
 - Date the contract ends;
 - Status of the contract: open or closed; and

- Aggregate total of outstanding payments.

Part 5 Capacity of Animal Feeding Operations

- 5.1. The capacity of an animal feeding operation shall be determined by the total length of the operation's feed bunks. In calculating the capacity, each linear foot of feed bunk shall equal one animal.

Part 6 Requirements for Public Warehouse Operations-Facility Requirements, Storage Capacity and Emergency and Temporary Storage Requirements.

- 6.1. Public Warehouse Operations. The public warehouse must ensure the facility conditions and equipment are suitable for the storing and shipping of commodities and must ensure:
- 6.1.1. The physical condition of the public warehouse is able to protect against weather conditions that may cause deterioration of the commodities stored therein;
 - 6.1.2. The public warehouse possesses handling equipment that is in good working order and sufficient to transfer commodities safely into and out of the warehouse, and to otherwise maintain the quality of the commodity while in storage;
 - 6.1.3. The public warehouse possesses scales that are of sufficient capacity to efficiently and accurately weigh commodities into and out of the warehouse; and
 - 6.1.4. All areas of the public warehouse in which a commodity is stored can be safely measured during a Department examination. If any area of a public warehouse is unsafe to examine, only the area(s) the examiner can safely inspect will be included in the inventory of that examination.
- 6.2. Facility Requirements. A public warehouse must comply with the following:
- 6.2.1. Ensure all grain is stored in approved warehouse space;
 - 6.2.2. Store all grain in a manner that permits easy access for inspecting, sampling, measuring and identification;
 - 6.2.3. Allow for complete access to storage bins for inspection purposes by providing ladders and access to inspection doors and manways;
 - 6.2.4. Securely affix clearly discernible numbers to identify grain bins and other authorized licensed storage areas. Temporary and emergency storage must be numbered in such a manner that clearly shows the approved space;
 - 6.2.5. Maintain warehouse(s) in sound physical condition consistent with good warehousing practices; and
 - 6.2.6. Keep the warehouse and the property on which it is located clean and safe at all times.
- 6.3. Storage Capacity. Approved storage space may be used only when all other licensing requirements have been met, and a public warehouse license has been issued by the Commissioner.

- 6.3.1. The licensed storage capacity of the public warehouse may be increased upon the Commissioner's written verification that the space to be added meets all necessary requirements. Prior to using any additional space, the warehouse operator, based on the increased capacity, must increase stock insurance and its surety bond to the amounts required pursuant to sections 35-36-204, C.R.S., and 35-36-216(1)(a), C.R.S.
- 6.3.2. The licensed storage capacity of the public warehouse may be decreased, or space deleted from a license. However, if the space is connected to other licensed space by grain transporting equipment, the Commissioner may consider the space as a single functional unit and require the space to remain licensed.
- 6.4. Emergency and Temporary Storage. The public warehouse operator may, under the Commissioner's sole discretion, license emergency or temporary storage space for commodities. The requirements for flooring, sidewalls, and immobility in Part 3.3.6 may be modified by the Commissioner for emergency or temporary storage on a case-by-case basis. Any request for such exemption must demonstrate adequate protection for any stored commodity.
- 6.4.1. Prior to utilizing emergency or temporary space, a public warehouse operator must:
- Submit a written request to the Department for the use of the emergency or temporary storage, including the location and the total bushel amount to be stored;
 - Operate the emergency and temporary storage space in conjunction with the licensed warehouse;
 - Meet all bonding, net worth, financial assurance and insurance requirements;
 - Provide access to the emergency and temporary storage space for examination purposes;
 - Maintain separate inventory records of each commodity stored in emergency and temporary storage space, as well as accounting for such commodities in the Daily Position Report; and
 - Provide notification to the Department of the date when all the commodities stored in temporary and emergency space have been removed.
- 6.4.2. A public warehouse operator requesting the use of temporary storage, including but not limited to grain storage bags, must:
- Use asphalt, concrete or other approved base materials;
 - Use rigid self-supporting sidewalls;
 - Provide adequate aeration;
 - Provide acceptable covering or tarp;
 - Provide written notification before reusing licensed temporary space for another crop year; and
 - Pick up all grain in temporary storage by July 1. Additional time to pick up grain may be requested so long as the grain is in adequate condition.

- 6.4.3. A public warehouse operator requesting the use of emergency storage must pick up all grain in emergency storage by May 1. Additional time to pick up grain in emergency storage may be requested so long as the grain to be picked up is still in adequate condition.

Part 7 Bond Schedule - Alternative Bond Schedule Requirements

- 7.1. Each licensee required to obtain a surety bond or irrevocable letter of credit must determine the minimum amount of coverage by the following methods:
- 7.1.1. Commodity Handler: bond amounts must be determined by calculating 2% of the annual Colorado commodity purchases and transactions in the previous calendar year. Transactions include the value of brokered commodities.
- Minimum bond of \$10,000
 - Maximum bond of \$1,000,000
- 7.1.2. Commodity Handler (Public Warehouse)
- \$.10/bu. for grain storage capacity and/ or \$.50/cwt of bean storage capacity.
 - Minimum bond of \$25,000
 - Maximum bond of \$1,000,000.
- 7.1.3. Farm Products Dealers: bond amounts must be determined by calculating 2% of the annual Colorado farm product purchases and transactions in the previous calendar year. Transactions include the value of brokered farm products.
- Minimum bond of \$3,000
 - Maximum bond of \$1,000,000
 - Farm products dealers: \$5,000 minimum
 - Farm products brokers: \$10,000 minimum
 - Farm products dealers dealing only in fruits and vegetables: \$3,000 minimum
- 7.1.4. Farm products Dealers with storage facilities: \$10,000 minimum
- 7.1.5. Farm Products Dealers purchasing only sugar beets: bond amounts must be determined by calculating 1% of the annual Colorado farm product purchases and transactions in the previous calendar year.
- 7.2. If an applicant fails to file a bond or an irrevocable letter of credit meeting the requirements of section 11-35-101.5, C.R.S., within ninety (90) calendar days of the date of application, the application is void. The license fee will not be refunded.
- 7.2.1. Any subsequent application for a license shall require a new license application and license fee.

- 7.3. A commodity handler or farm products dealer licensee may petition the Commissioner for a reduction in the required bond amount or irrevocable letter of credit. Licensees that are approved for a reduction may base their bond amounts by calculating 1% of the annual Colorado commodity or farm products purchases and transactions in the previous calendar year. To qualify, a licensee must meet the following requirements:
- 7.3.1. Provide a written petition for a reduction in the required bond or irrevocable letter of credit amount that demonstrates their compliance with the requirements of Part 7.3;
- 7.3.2. Have had a license, and been in good standing, for the previous three years, and have not had any verified claim and complaint on file with the CDA in the past three years; and
- 7.3.3. Provide annual certified financial statements or an audit, prepared by a certified public accountant, that demonstrates the licensee meets the following financial criteria for the current year, plus the previous two years:
- Current ratio (current assets / current liabilities) equal to at least 1.15:1.
 - Debt to equity ratio (total debt / total equity); less than .6:1
 - Positive working capital (current assets - current liabilities).
- 7.3.4. A commodity handler or farm products dealer licensee that is unable to meet two of three financial criteria in Parts 7.3.3 may provide alternative documentation for consideration by the commissioner that adequately demonstrates a similar level of financial assurance and stability. Requirements in Parts 7.3.1 and 7.3.2 must be met and annual certified financial statements or an audit prepared by a certified public accountant as required in Part 7.3.3 must be provided.
- 7.3.5. The Commissioner shall approve or deny a request for a reduced bond amount in the Commissioner's sole discretion. The Commissioner may consult with the Agriculture Commission.
- 7.3.6. Licensees who are granted a bond or irrevocable letter of credit reduction must conspicuously post the approval from the commissioner.
- 7.3.7. A reduction in the required bond or irrevocable letter of credit amount is not guaranteed even if all the requirements of Part 7.3 are met. Any reduced bond amount may be denied, awarded or revoked at the sole discretion of the Commissioner.
- 7.3.8. A licensee must monitor their ability to qualify for a reduced bond or irrevocable letter of credit on an annual basis, and must notify the Commissioner if they no longer meet the requirements defined in Part 7.3. and must secure a new bond or irrevocable letter of credit in the amount required in Part 7.2. within 30 calendar days from the date of notification.
- 7.3.9. An owner who sells a commodity to a small volume commodity handler who is exempt from the requirement to license as a commodity handler, as defined in section 35-36-102(33), C.R.S., is not eligible to file a claim under section 35-36-216(1)(c)(I), C.R.S., for any loss or damage sustained from the sale of commodities to a small volume commodity handler exempt from licensing.

Part 8 Irrevocable Letters of Credit In Lieu Of Surety Bonds

- 8.1. These rules shall apply to all irrevocable letters of credit that are submitted by licensees under the Act in lieu of a surety bond required by the Act as a condition of licensure.
- 8.2. A licensee may submit an irrevocable letter of credit issued by a state or national bank, or by a state or federal savings and loan association doing business in Colorado, or by a bank for cooperatives organized pursuant to federal statutes, serving the region in which the state of Colorado is located, that currently meets all applicable minimum capital requirements imposed under state and/or federal law, in lieu of a surety bond required by the provisions of sections 35-36-216, C.R.S., and 35-36-304, C.R.S.
- 8.3. The beneficiary named in the letter of credit shall be the Colorado Commissioner of Agriculture in favor of the people of the state of Colorado. Payment shall be made immediately upon presentation of sight draft(s) signed by the Commissioner of Agriculture, or their designated representative, without accompanying supporting documentation.
- 8.4. All letters of credit shall conform to the Commissioner's standard letter of credit form. A standard letter of credit form is available upon request from the Division of Inspection and Consumer Services, Colorado Department of Agriculture, 305 Interlocken Parkway, Broomfield, CO 80021 and available on the Department's website at www.colorado.gov/ag/ics.
- 8.5. A sight draft upon a letter of credit may be presented for payment for the reasons that surety bond proceeds may be demanded for disbursement under the provisions of Title 35, Article 36, C.R.S.
- 8.6. Letters of credit shall have a term of three (3) years and shall be automatically renewable for additional one (1) year term. Any authorization of a shorter time period shall be at the sole discretion of the Commissioner or designee. A letter of credit may be revoked by the licensee or issuer only at its expiration date, and by giving the Commissioner at least one hundred twenty (120) calendar days written notice prior to the expiration date. Notice is deemed to have been given as of its receipt by the Commissioner. Upon such notice timely received, the licensee shall be required to arrange for substitution of a suitable surety bond or another irrevocable letter of credit that meets the requirements of Sections 35-36-216 and 35-36-304, C.R.S., at least sixty (60) days prior to the expiration of the letter of credit. If the Commissioner does not timely receive satisfactory evidence of such arrangements, the Commissioner may proceed in accordance with the provisions of sections 35-36-205(1)(e) or 35-36-306(1)(d), C.R.S., as applicable.
- 8.7. If a licensee desires to surrender its license and requests the release of a letter of credit, the licensee must return its license and make written request by certified mail, return receipt requested, for the release of the letter of credit. The Commissioner shall retain the letter of credit for a period of 548 calendar days, approximately 18 months, following receipt of the written request and the returned license, or until such time that the Commissioner is satisfied that no claims against the licensee exist, before notice of release is transmitted to the issuer.
- 8.8. In the event that a licensee desires to substitute a surety bond for a letter of credit, then in possession of the Commissioner, the letter of credit shall remain in force for a period of 548 calendar days, approximately 18 months, following the effective date of the surety bond, or for such time as may be required to fully ascertain the existence of any claims against the licensee, whichever period is longer. Thereafter, notice of release shall be transmitted to the issuer of the letter credit.

- 8.9. In the event that a plurality of letters of credit from any number of issuers are presented in satisfaction of a licensee's bonding obligation, the Commissioner may satisfy claims under the applicable provisions of Title 35, Article 36, C.R.S., by presentment of sight drafts against one (1) or more such letters of credit, without regard to proration.
- 8.10. A licensee shall be required to augment letters of credit in any situation where it would be required to increase its coverage under a surety bond. Such augmentation shall be commensurate to the increased surety bond coverage requirement. The new letter of credit issued in the new required amount may be substituted for a prior letter upon the renewal date of the prior letter.
- 8.11. A licensee or prospective licensee may present any combination of letters of credit and surety bonds in satisfaction of its bonding requirement under the applicable provisions of Title 35, Article 36, C.R.S. In making disbursements for claims, the Commissioner shall draw upon the letter(s) of credit first and make demand upon surety bond(s) second.

Part 9 Requirements for Maintaining Records

For the purposes of Article 36 of the Act, a commodity handler and farm products dealer shall maintain legible, accurate and complete records and systems of filing for the accounting of all transactions including scale tickets, settlement sheets, and daily position reports.

- 9.1. Commodity Handlers
- 9.1.1. Must maintain accurate and complete records at the place of business recorded on the license application.
- 9.1.2. A commodity handler must maintain scale tickets issued in numerical sequence.
- 9.1.3. Scale tickets must contain the following:
- Scale ticket number;
 - Net weight;
 - Dockage;
 - Date;
 - Owner's name;
 - Commodity handler's name or small-volume commodity handler's name;
 - Commodity test weight with dockage and grade, if applicable;
 - Gross weight;
 - Tare weight; and
 - Net weight.
- 9.1.4. A commodity handler must maintain settlement sheets for each depositor.
- 9.1.5. All settlement sheets must include the following information:

- The owner's name and address;
- The scale ticket numbers;
- Total receipts of all commodities by type;
- Total withdrawals;
- Test weight and grade;
- The date of deliveries;
- The price per bushel or unit;
- The date and amount of payment; and
- If a credit sale contract is used, the credit sale contract number must be included in the settlement sheet.

9.1.6. The Daily Position Report must, at the close of each business day, include an accurate and complete record of each kind and class of commodity based on source documents. In addition, it must include the following:

- Total stocks by commodities received or loaded out;
- Forwarding of commodities to terminal storage;
- Conversions of whole commodities to feed;
- Negotiable warehouse receipt obligations;
- Open storage obligations for each kind and class of commodities;
- Open credit-sale contracts;
- Public-warehouse-owned commodities; and
- If licensed as a public warehouse, the Daily Position Report must also include the total storage obligations.

9.1.7. In addition to the Daily Position Report requirements in Part 9.1.6., a commodity handler licensed as a public warehouse must maintain the following additional documents:

- A complete and accurate record of corrections and adjustments made to the Daily Position Report;
- Records of each holder of a warehouse receipt;
- Records of direct-shipment grain delivered directly from the owner to the purchaser; and
- An accurate and complete accounting system of all money received and disbursed.

9.2. Farm Products Dealers

9.2.1. Farm Products Dealers must maintain accurate and complete records at the place of business recorded on the license application. Such records must include:

9.2.1.1. Any and all ledgers, books of accounts, memoranda, and other documents which relate to farm products purchases and storage transactions. Including:

- Procurement contracts;
- Sales contracts;
- Credit-sale contracts;
- Storage contracts;
- Procurement Invoices; and
- Sales Invoices.

9.2.2. A current record of all farm products credit-sale contract obligations pursuant to section 35-36-307, C.R.S., including all payments and unpaid balances.

9.3. Commodity Handlers and Farm Products Dealer Records Inspections.

9.3.1. All financial records, commodity handling records, farm product dealing records, and payment records must be available for inspection by the Department during ordinary business hours.

9.3.2. Ordinary business hours are from 8 a.m. to 5 p.m., Mountain Standard Time, Monday through Friday, except holidays.

Part 10 Financial Assurance Requirements

A commodity handler and farm products dealer must maintain acceptable financial assurances as defined by the Commissioner in Part 2.8.

10.1. A commodity handler and farm product dealer who offers credit-sale contracts must:

10.1.1. Submit a financial statement within ninety (90) calendar days after fiscal year end that conforms to the applicable requirements of sections 35-36-204(1)(b) and 35-36-307(3), C.R.S.

10.1.2. The Department may grant an extension of no more than sixty (60) calendar days, if requested in writing by a licensee or applicant prior to the date the financial statement is due.

10.1.3. The financial statement must consist of the following documents prepared in accordance with generally accepted accounting principles (GAAP):

- A balance sheet;
- A statement of income; and
- Financial statement notes, if any.

10.1.4. If the financial statement is restated, recalculated, or republished, the licensee must notify the Department in writing within seven (7) calendar days.

10.2. Commodity Handler-Public Warehouse

10.2.1. In addition to the requirements in Part 10.1 of this rule, a public warehouse must also have and maintain a total allowable net worth of at least the amount obtained by multiplying \$0.25 by the approved warehouse storage capacity in bushels or by multiplying \$1.25 warehouse dry bean storage capacity in hundredweight.

10.2.2. An Additional bond may be required if a public warehouse net worth falls below \$0.25/bu. of grain storage capacity and/or \$1.25/cwt bean storage capacity.

Part 11 Negotiable Commodity Warehouse Receipts

11.1. All negotiable commodity warehouse receipts.

11.1.1. All negotiable commodity warehouse receipts shall be issued no later than the close of the next business day following demand by the depositor or depositor's agent.

11.1.2. All negotiable commodity warehouse receipts shall include the following information:

- The person to whom the receipt is issued;
- The location of the storing warehouse;
- The storage rate;
- The date issued;
- The type of grain;
- The grade and sub class of the grain;
- The dock percentage;
- The pounds of grain including dock;
- The gross bushels;
- The net pounds;
- The net bushels;
- The hundred weight (for grain sorghums);
- The elevation charges prepaid per bushel in and out;
- The date storage paid to; and
- The signature of the warehouse operator or authorized agent for the warehouse operator.

11.1.3. No more than one product, or grade or value of a product, shall be shown on a negotiable commodity warehouse receipt.

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- 11.1.4. Any errors in a negotiable commodity warehouse receipt shall be corrected by cancellation and replacement of the receipt. No alterations shall be made to a negotiable commodity warehouse receipt after it is issued.
- 11.1.5. A collateral negotiable commodity warehouse receipt cannot be issued for grain received under a credit-sale contract except for the percentage of bushels paid for through advances to the seller. The amount and percentage of advances shall be shown on the face of the credit-sale contract.
- 11.1.6. No negotiable commodity warehouse receipt shall be canceled by a warehouse operator unless:
- The product represented by the receipt has been removed from storage by the owner; or
 - The product has been purchased and paid for; or
 - A replacement receipt is issued at the time the receipt is canceled; or
 - The product represented by the receipt is purchased under a properly executed credit-sale contract.
- 11.2. Paper negotiable commodity warehouse receipts.
- 11.2.1. When a commodity represented by a paper negotiable commodity warehouse receipt is delivered to the holder of that receipt, or purchased by the warehouse, the receipt shall be marked "canceled," signed or initialed, and dated by the commodity warehouse operator. The receipt shall include the check number, invoice reference, or credit-sale contract reference number as applicable. The commodity warehouse operator shall retain, in a separate file, all receipts cancelled by the operator. At the time of inspection or examination by the Department, the warehouse operator shall present the receipts to be canceled by the Department.
- 11.2.2. If only a portion of the commodity represented by a paper negotiable commodity warehouse receipt is delivered, the receipt shall be dated, signed or initialed, and marked "canceled" by the commodity warehouse operator. A new receipt shall be issued covering the balance of the commodity remaining in storage the same day as the original receipt is canceled. The new receipt shall specify the balance of the remaining commodity and the number(s) of the prior receipt(s).
- 11.2.3. To cancel a paper negotiable commodity warehouse receipt, a commodity warehouse operator shall mark the face of the receipt "canceled," sign or initial, and date it, and record the disposition of the receipt, including the check number or contract number as applicable.
- 11.2.4. A commodity warehouse operator whose license has been relinquished or revoked shall return all unissued paper negotiable commodity warehouse receipts to the Department within thirty (30) days of such action.

- 11.2.5. When a commodity warehouse operator's license has been relinquished or revoked, all stored commodities for which negotiable commodity paper warehouse receipts or scale tickets have been issued shall be either purchased and paid for or returned to their holders, within thirty (30) days, except when the warehouse continues operation under new ownership, the storage obligations are assumed by another licensee, or the warehouse is placed in receivership. Upon completion of delivery to a receipt holder or the reissuance of a receipt under a new license, the commodity warehouse operator shall immediately mark "canceled," sign or initial, and date the original receipt on its face, and forward such receipt to the Department. When the storage obligations are assumed by a new licensee, new negotiable commodity warehouse receipts shall be issued under the new licensee name for all open receipts.
- 11.2.6. No commodity represented by a paper negotiable commodity warehouse receipt shall be delivered until the original receipt is returned to the commodity warehouse operator.
- 11.2.7. If a paper negotiable commodity warehouse receipt has been destroyed or lost by the commodity warehouse operator, the operator shall prepare a notarized affidavit in duplicate stating that the receipt was lost or destroyed and specifying the date that such loss or destruction occurred. The affidavit shall state that no obligation is due any person under that paper receipt. The affidavit shall be held in lieu of the original copy of the receipt. If the lost receipt is found, it shall be forwarded immediately to the Department for cancellation. If a depositor's name is on the receipt, the commodity warehouse operator shall also obtain a written statement from the depositor that confirms that the depositor has received or been paid for the commodity and that the depositor has no further claim against said receipt.
- 11.3. Electronic negotiable commodity warehouse receipts.
- 11.3.1. Prior to entering into an agreement with an electronic commodity warehouse receipt provider to issue such receipts, a commodity warehouse operator must provide a copy of the proposed agreement to the Department for review and approval. A commodity warehouse operator shall not issue electronic negotiable commodity warehouse receipts until and unless the Department approves its agreement with an electronic commodity warehouse receipt provider and notifies the operator of such approval.
- 11.3.2. In order to be approved by the Department, an electronic commodity warehouse receipt provider agreement shall:
- Provide for the Department to become a joint holder on all open electronic negotiable commodity warehouse receipts if the issuing commodity warehouse operator's license is relinquished or revoked;
 - Require the provider to provide security as required by its provider agreement with the USDA regarding on-site security, data authorization, security plans, and facility vulnerability;
 - Prohibit the provider from deleting or altering any electronic negotiable commodity warehouse receipts in the centralized filing system unless such actions are authorized by the Department;
 - Require the provider to maintain all electronic negotiable commodity warehouse receipts in secure data storage for a period of six (6) years after their cancellation dates;

- Require the provider to provide the Department free unrestricted access to the centralized filing system and related backup files; and
 - Require the provider, when a commodity warehouse operator changes providers, to supply the new provider and the warehouse operator with a complete list of all the current holders of open electronic negotiable commodity warehouse receipts prior to the intended transfer date.
- 11.3.3. Commodity warehouse operators may change providers only once a year unless otherwise permitted by the Department.
- 11.3.4. A commodity warehouse operator shall notify the Department thirty (30) calendar days prior to the intended date of any transfer to a new provider. Such notification shall include the exact date of the proposed transfer. The operator must also, thirty (30) days prior to the intended transfer date, send notices of the change to the holders of all open electronic negotiable commodity warehouse receipts. The notices shall specify the date and time period during which access to receipts will not be available.
- 11.3.5. When a commodity warehouse operator's license has been relinquished or revoked, all stored commodities for which negotiable commodity electronic warehouse receipts have been issued shall be either purchased and paid for or returned to their holders, within thirty (30) days, except when the warehouse continues operation under new ownership, the storage obligations are assumed by another licensee, or the warehouse is placed in receivership. Upon completion of delivery to a receipt holder or the reissuance of a receipt under a new license, the commodity warehouse operator shall immediately cancel the receipt.

Part 12 Requirements for Credit-Sale Contracts

- 12.1. When a farm products dealer, small-volume farm products dealer, or commodity handler issues a credit-sale contract, the contract must include the following, which is in addition to the requirements in section 35-36-207(1) and 35-36-307(1) C.R.S.:
- The signature of the producer or the owner;
 - The signature of the commodity handler or farm products dealer's authorized agent, and
 - A completion date, or date payment is due.
- 12.2. When a farm products dealer or small-volume dealer receives farm products for which payment has not been made, the farm products dealer or small-volume dealer, within thirty (30) calendar days after the receipt of such farm products, shall provide the producer or owner of the farm products with a credit-sale contract containing the statement: "this contract constitutes a voluntary extension of credit by the owner to the dealer or small-volume dealer. The surety bond or irrevocable letter of credit of the dealer or small-volume dealer may not completely protect the owner from financial loss in the event of a failure of the dealer or small-volume dealer." Such statement shall be conspicuously printed on the first page of the contract, in the same font and font size as the majority of the text in the contract.

- 12.3. When a commodity handler receives commodities for which payment has not been made, the commodity handler, within thirty (30) calendar days after the receipt of such commodities, shall provide the producer or owner of the commodities with a credit-sale contract containing the statement: "this contract constitutes a voluntary extension of credit by the owner to the commodity handler. The surety bond or irrevocable letter of credit of the commodity handler may not completely protect the owner from financial loss in the event of a failure of the commodity handler." Such statement shall be conspicuously printed on the first page of the contract, in the same font and font size as the majority of the text within the contract.
- 12.4. A commodity handler issuing credit sale contracts shall maintain positive working capital and a current ratio equal to or greater than one-to-one.
- 12.5. When a dealer, small-volume dealer, or commodity handler reaches the completion date, or the date payment is due on a credit-sale contract, for which payment has not been made, a new contract shall be entered into.

Part 13 Statements of Basis, Specific Statutory Authority and Purpose

A. Adopted November 1, 2007 – Effective December 30, 2007

Statutory Authority:

These Rules pertaining to the administration and enforcement of the Farm Products and Commodity Handler Acts, § 12-16-101 - 223, C.R.S., are proposed for adoption by the Commissioner pursuant to his authority in § 12-16-117(1) C.R.S. and § 12-16-210(1), C.R.S.

Purpose:

The purposes of these rules are to implement the statutory changes to the Farm Products and Commodity Handler Acts which required the Commissioner to: (1) establish rules to determine the capacity of animal feeding operations; and (2) establish rules to specify the licensure dates of a dealer, small volume dealer, agent, and commodity handler.

Factual Basis:

1. Sections 12-16-103(4)(a)(V) and 12-16-202(4.5)(a)(V), C.R.S. (2007), require the Commissioner to establish rules to determine the capacity of animal feeding operations. Factual information provided by the industry and Iowa State University support the use of one linear foot of feed bunk per animal to calculate such capacity.
2. Sections 12-16-104 (4) and 12-16-203 (2), C.R.S. (2007) require the Commissioner to specify by rule the expiration dates of dealer, small volume dealer, agent, and commodity handler licenses.

B. Adopted April 9, 2013 – Effective January 1, 2014

STATUTORY AUTHORITY:

The Commissioner's authority for the adoption of this permanent rule amendment is set forth in §§ 12-16-104(4), § 35-16-206(2) and § 35-1-107(5)(a), C.R.S.

PURPOSE:

The purpose of this permanent rule amendment is to amend Section 2 to change the expiration date for a dealer, small volume dealer, agent and commodity handler license from the last day of February to December 31.

FACTUAL AND POLICY BASIS:

The factual and policy issues pertaining to the adoption of this permanent rule amendment are as follows:

1. This change is necessary to allow the Department to consolidate licensing functions to one time per year for all licenses issued by the ICS Division.
2. The Department of Agriculture is moving its licensing functions from a paper based system to an online system. To accommodate licensee's who hold multiple licenses with the Department of Agriculture, we are establishing a common licensing date so a licensee can obtain all their licenses in one transaction.

C. Adopted June 11, 2014 - Effective July 30, 2014

STATUTORY AUTHORITY:

The Commissioner's authority for the adoption of these rule amendments are set forth in Sections 12-16-104(4), 12-16-110.5(1)(e), 12-16-117(1), 12-16-206(2), 12-16-208(1)(f), 12-16-210(1), 12-16-211(4) and 35-1-107(5)(a), C.R.S.

PURPOSE:

The purposes of these rule amendments are to:

1. Create a new Part 4 to require a statement in a credit sales contract that warns a producer that entering into such a contract entails a risk that the bond may not completely protect the producer from loss in the event of a failure of the dealer, small volume dealer, or commodity handler.
2. Create a new Part 5 to consolidate the rules that applied to letters of credit and create uniformity between bonds and letters of credit so the process and timelines for both are the same, and to accept letters of credit issued by a farm credit administration bank for cooperatives.
3. Create a new Part 6.1 to regulate the issuance, of all negotiable commodity warehouse receipts. Provide for the correct issuance, transfer and cancellation of all negotiable commodity warehouse receipts.
4. Create a new Part 6.2 to establish regulations specific to the issuance, transfer and cancellation of paper negotiable commodity warehouse receipts.
5. Create a new Part 6.3 to establish regulations specific to the issuance, transfer and cancellation of electronic negotiable commodity warehouse receipts.

Factual and Policy Basis:

The factual and policy issues pertaining to the adoption of this permanent rule amendment are as follows:

1. House Bill 13-1034 amended Sections 12-16-110.5 and 12-16-208, C.R.S. to require the commissioner to specify a statement by rule that warns a producer that entering into a credit sales contract entails a risk that the bond may not completely protect the producer from loss in the event of a failure of the dealer, small volume dealer, or commodity handler. This bill also extended the timeline for a warehouse to issue a credit sales contract from sixty (60) days to thirty (30) days.

2. Rule 8 CCR 1202-08 was struck and reinstated into rule 8 CCR 1202-11 with amendments. House Bill 13-1034 amended Sections 12-16-106 and 12-16-218 C.R.S. to change the liability of bonds and letters of credit from twenty four (24) months to one hundred eighty (180) days and created uniformity between bonds and letters of credit so the process and timeliness for both are the same. The current Department letter of credit form and Section 11-35-101.5 C.R.S. both allow for the acceptance of letters of credit issued by a farm credit administration bank for cooperatives.
3. House Bill 13-1034 amended Section 12-16-211, C.R.S. the amendment allows for the use of negotiable electronic negotiable commodity warehouse receipts in addition to paper negotiable commodity warehouse receipts. Prior to HB 13-1034, only paper negotiable commodity warehouse receipts were allowed to be used. Going forward an owner of commodities can use both paper and electronic negotiable warehouse receipts. These rules are needed to regulate the issuance, use, and records requirements of both paper and electronic negotiable warehouse receipts.
4. House Bill 13-1034 amended Section 12-16-211(2), C.R.S. the amendment allows for the issuance of paper negotiable commodity warehouse receipts and makes the Department the sole source of paper negotiable warehouse receipts. The amendment requires the Department to furnish these receipts at cost to licensed warehouse operators. Since paper negotiable warehouse receipts are a physical document there is a difference in how paper and electronic warehouse receipts are handled by the owner of commodities and the warehouse operator. These rules are needed to regulate the issuance, use, and records requirements of paper negotiable warehouse receipts.
5. House Bill 13-1034 amended Section 12-16-211(3), C.R.S. the amendment allows for the issuance of electronic negotiable commodity warehouse receipts generated by a vendor approved by the United States Department of Agriculture instead of paper negotiable warehouse receipts. These rules are needed to ensure data is secure, not changed inappropriately and only released to authorized parties. These rules are also needed to ensure the centralized filing system is operated by an approved neutral third party vendor in a confidential and secure fashion independent of any outside influence or bias in action or appearance.

D. Adopted June 9, 2021 – Effective July 30, 2021

STATUTORY AUTHORITY

The Commissioner's statutory authority for the adoption of this permanent rule amendment is set forth in section 35-36-103(1), C.R.S.

PURPOSE

The purpose of this rulemaking is to comply with program changes as a result of a Sunset Review and subsequent changes in House Bill 20-1213. Section 35-36-103(1), C.R.S., requires the Commissioner to conduct specific rulemaking. This rulemaking revision includes: new requirements for license applications, new requirements for public warehouse operations and storage, a new bond schedule including alternative rates for qualifying licensees, new recordkeeping requirements, and new requirements for credit sales contracts. Additionally, this rulemaking provides a definition section for improved clarity and uniformity of terms.

FACTUAL AND POLICY BASIS

This rulemaking is required by section 35-36-103(1), C.R.S., and is based on stakeholder input. The purported changes to the license application requirements, public warehouse operations and storage requirements, bond schedules, recordkeeping requirements and credit-sale contracts requirements will provide added protection for consumers and producers in the industry. The added definition section provides clarity and uniformity throughout the program.

E. Adopted November 10, 2021 – Effective December 30, 2021

STATUTORY AUTHORITY

The Commissioner's statutory authority for the adoption of this permanent rule amendment is set forth in section 35-36-103(1), C.R.S.

PURPOSE

The purpose of this rule making is to clarify the definitions of the terms Commodity Handler and Dealer to properly align with 35-36-102, C.R.S.

FACTUAL AND POLICY BASIS

This rulemaking clarifies the definitions of the terms Commodity Handler and Dealer so they are the same as the definitions in section 35-36-102(8) and (12), C.R.S. respectively. The updated definition section provides clarity and uniformity throughout statute and rule.

Editor's Notes

History

Entire rule eff. 12/30/2007.

Parts 2, 4.B eff. 01/01/2014.

Entire rule eff. 07/30/2014.

Entire rule eff. 07/30/2021.

Parts 2, 13 E eff. 12/30/2021.