



NOTICE OF PUBLIC RULEMAKING HEARING

FOR AMENDMENTS TO

Rules for the “Administration and Enforcement of the Commodity Handler and Farm Products Acts, Sections 35-36-101 through 125 and 35-37-101 through 122, C.R.S.” 8 CCR 1202-11

Notice is hereby given pursuant to § 24-4-103 C.R.S. that the Department of Agriculture will hold a public rulemaking hearing:

DATE: October 20, 2021
TIME: 9:00 am
LOCATION: This hearing will be held via [Zoom](#)
CALL INFORMATION: 1-346-248-7799
MEETING ID: 810 3350 7054
PASSCODE: 472721

In order to maintain a proper hearing record you are encouraged to pre-register by completing this [Google form](#). If you do not have access to Google you may send your name and telephone number to Jenifer.Gurr@state.co.us
Pre-registration is not required to participate in the hearing.

The purpose of this rulemaking is to clarify the definitions of the terms Commodity Handler and Dealer to properly align with definitions in statute.

The statutory authority for these rules is § 35-36-103(1), C.R.S.

Any interested party may file written comment with the Commissioner's office prior to the hearing, or present at the aforementioned hearing written data, views or arguments. Emailed comments should be sent to the hearing officer at Jenifer.Gurr@state.co.us. A copy of the proposed rule is available on the Department of Agriculture's website at www.colorado.gov/ag or may be obtained by calling 303-869-9004. The proposed rule shall be available for public inspection at the Colorado Department of Agriculture at 305 Interlocken Parkway, Broomfield, Colorado during regular business hours.



Editing comments: Changes to this rule are indicated in ~~strike~~through for removal and underline for additions. If you are able to view this document in color the changes are also indicated in red. Changes as a result of the rulemaking hearing are indicated in blue.

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

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. "~~Farm Products~~-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

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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 13 Statements of Basis, Specific Statutory Authority and Purpose

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

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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.