

DEPARTMENT OF AGRICULTURE

Inspection and Consumer Services Division

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

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

Part 1 Legal Authority

Section 35-37-120(1), C.R.S. and 35-36-111(1), C.R.S.

Part 2 Licensure Dates

For the purposes of Article 37 and Article 36 of the Commodity Handler and Farm Products Acts the expiration date for the following licenses shall be the last day of December.

- 2.1. Dealer
- 2.2. Small-volume dealer
- 2.3. Agent
- 2.4. Commodity handler

Part 3 Capacity of Animal Feeding Operations

For the purposes of Article 37 and Article 36 of the Commodity Handler and Farm Products Acts, the capacity of an animal feeding operation shall be determined by the total length of the operations feed bunks. In calculating the capacity, each linear foot of feed bunk shall equal one animal.

Part 4 Credit Sales Contracts

- 4.1. When a dealer or small-volume dealer receives farm products for which payment has not been made, the dealer or small-volume dealer, within thirty (30) 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.

- 4.2. When a commodity handler receives commodities for which payment has not been made, the commodity handler, within thirty (30) 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.

Part 5 Irrevocable Letters Of Credit In Lieu Of Surety Bonds

- 5.1. These rules shall apply to all irrevocable letters of credit that are submitted by licensees under the Commodity Handler and Farm Products Act in lieu of a surety bond required by the Act as a condition of licensure.
- 5.2. 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, may be submitted to the Department in lieu of a surety bond required by the provisions of 35-36-119, C.R.S. and 35-37-106, C.R.S.
- 5.3. 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 presentment of sight draft(s) signed by the Commissioner of Agriculture or his designated representative without accompanying supporting documentation.
- 5.4. 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, 2331 w 31st Avenue, Denver, Colorado 80211 and available on the Departments website at www.colorado.gov/ag/ics.
- 5.5. 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, Articles 36 and 37, C.R.S.
- 5.6. Letters of credit shall have a term of three (3) years, and shall be automatically renewable for additional one (1) year terms. Any authorization of a shorter time period shall be at the sole discretion of the Commissioner or his designee. A letter of credit may be revoked by the licensee or issuer only at its expiration date, by giving the Commissioner of Agriculture at least one hundred twenty (120) days written notice prior to the expiration date. Notice is deemed to have been given as of its receipt by the Commissioner of Agriculture. 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 35-37-106 and 35-36-119, 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, he may proceed in accordance with the provisions of Sections 35-37-108(1)(d) or 35-36-107(1)(e), C.R.S., as applicable.
- 5.7. 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 one hundred twenty (120) days following his 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.

- 5.8. In the event that a licensee desires to substitute a surety bond for a letter of credit then in possession of the Commissioner of Agriculture, the letter of credit shall remain in force for a period of ninety (90) days 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.
- 5.9. 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 and Article 37, C.R.S., by presentment of sight drafts against one (1) or more such letters of credit, without regard to proration.
- 5.10. 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. A new letter of credit for such lesser amount may be substituted for a prior letter upon the renewal date of the prior letter.
- 5.11. 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 and Article 37, 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 6 Negotiable Commodity Warehouse Receipts

- 6.1. All negotiable commodity warehouse receipts.
 - 6.1.1. 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.
 - 6.1.2. All negotiable commodity negotiable warehouse receipts shall include the following information:
 - 6.1.2.1. The person to whom the receipt is issued;
 - 6.1.2.2. The location of the storing warehouse;
 - 6.1.2.3. The storage rate;
 - 6.1.2.4. The date issued;
 - 6.1.2.5. The type of grain;
 - 6.1.2.6. The grade and sub class of the grain;
 - 6.1.2.7. The dock percentage;
 - 6.1.2.8. The pounds of grain including dock;
 - 6.1.2.9. The gross bushels;
 - 6.1.2.10. The net pounds;
 - 6.1.2.11. The net bushels;
 - 6.1.2.12. The, hundred weight (for grain sorghums);

- 6.1.2.13. The elevation charges prepaid per bushel in and out;
- 6.1.2.14. The date storage paid to;
- 6.1.2.15. The signature of the warehouse operator or authorized agent for the warehouse operator.
- 6.1.3. No more than one product, or grade or value of a product, shall be shown on a negotiable commodity warehouse receipt.
- 6.1.4. Any errors in a negotiable commodity warehouse receipt shall be corrected by cancelation and replacement of the receipt. No alterations shall be made to a negotiable commodity warehouse receipt after it is issued.
- 6.1.5. 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.
- 6.1.6. No negotiable commodity warehouse receipt shall be canceled by a warehouse operator unless:
 - 6.1.6.1. The product represented by the receipt has been removed from storage by the owner; or
 - 6.1.6.2. The product has been purchased and paid for; or
 - 6.1.6.3. A replacement receipt is issued at the time the receipt is canceled; or
 - 6.1.6.4. The product represented by the receipt is purchased under a properly-executed credit-sale contract.
- 6.2. Paper negotiable commodity warehouse receipts.
 - 6.2.1. When a commodity represented by a paper negotiable commodity warehouse receipt for commodities 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, of 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.
 - 6.2.2. 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).
 - 6.2.3. 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.

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- 6.2.4. 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.
- 6.2.5. 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.
- 6.2.6. No commodity represented by a paper negotiable commodity warehouse receipt shall be delivered until the original receipt is returned to the commodity warehouse operator.
- 6.2.7. 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.
- 6.3 Electronic negotiable commodity warehouse receipts.
- 6.3.1. 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.
- 6.3.2. In order to be approved by the Department, an electronic commodity warehouse receipt provider agreement shall:
- 6.3.2.1. Provide for the Department to become a joint holder on all open electronic negotiable commodity warehouse receipt if the issuing commodity warehouse operator's license is relinquished or revoked.
- 6.3.2.2. 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.
- 6.3.2.3. 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.

- 6.3.2.4. 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.
- 6.3.2.5. Require the provider to provide the Department free unrestricted access to the centralized filing system and related backup files.
- 6.3.2.6. 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.
- 6.3.3. Commodity warehouse operators may change providers only once a year unless otherwise permitted by the Department.
- 6.3.4. 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.
- 6.3.5. 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.

Parts 7 – 9 Reserved

Part 10 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.

Editor's Notes

History

Entire rule eff. 12/30/2007.

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

Entire rule eff. 07/30/2014.