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Requirements for Grain Dealers

State of Colorado

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Requirements for Grain Dealers

STATE OF COLORADO

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C.R.S.A. § 12-16-107

§ 12-16-107. Investigations, hearings, and examinations

- (1) For the purpose of enforcing the provisions of this part 1, the commissioner may receive complaints from persons against any dealer, small-volume dealer, agent, or person assuming or attempting to act as such and, upon the receipt of such a complaint, may make any and all necessary investigations relative to said complaint.
- (2) The commissioner upon his own motion may, and upon the verified complaint of any person shall, investigate any transactions involving any provisions of this part 1.
- (3)
 - (a) The commissioner, upon consent of the licensee or upon obtaining an administrative search warrant, shall have free and unimpeded access to all buildings, yards, warehouses, and storage facilities owned by a licensee in which any farm products are kept, stored, handled, processed, or transported.
 - (b) The commissioner, upon consent of the licensee or upon obtaining a search warrant, shall have free and unimpeded access to all records required to be kept and may make copies of such records.
 - (c) The commissioner shall have full authority to administer oaths and take statements, to issue subpoenas requiring the attendance of witnesses before him and the production of all books, memoranda, papers, and other documents, articles, or instruments, and to compel the disclosure by such witnesses of all facts known to them relative to the matters under investigation. Upon the failure or refusal of any witness to obey any subpoena, the commissioner may petition the district court, and, upon a proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey such an order of the court shall be punishable as a contempt of court.
- (4) The commissioner may examine the ledgers, books, accounts, memoranda, and other documents and the farm products, scales, measures, and other items in connection with the business of any licensee relating to whatever transactions may be involved.
- (5) The commissioner shall not be required to investigate or act upon complaints regarding transactions which occurred more than one hundred twenty days prior to the date upon which the commissioner received the written complaint.
- (6) If the investigation is against a licensee, the commissioner shall proceed to ascertain the names and addresses of all producers, dealers, small-volume dealers, or owners of farm products, together with the accounts unaccounted for or due and owing to them by said licensee, and shall request all such producers, dealers, small-volume dealers, or owners to file verified statements of their respective claims with the commissioner. If a producer, dealer, small-volume dealer, or owner so requested fails, refuses, or neglects to file a verified statement in the office of the commissioner within thirty days after

the date of such request, the commissioner shall thereupon be relieved of any further duty or action under this part 1 on behalf of said producer, dealer, small-volume dealer, or owner.

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

(8)

(a) If the commissioner determines, after concluding an investigation on any complaint, that reasonable grounds exist to believe that a licensee has violated any of the provisions of this part 1, he shall notify the licensee that such complaint is valid and shall inform the licensee of his opportunity to request a hearing, in writing, on such complaint within ten days after the date of such notice.

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

(c) The commissioner shall conduct such hearing pursuant to the provisions of section 24-4-105, C.R.S. Thereafter, the commissioner shall enter in his office a decision specifying the relevant facts established at such hearing. If the commissioner determines from the facts specified that the licensee has not violated any of the provisions of this part 1, the complaint shall be dismissed. If the commissioner determines from the facts specified that the licensee has violated any of the provisions of this part 1, and that the licensee has not yet made complete restitution to the person complaining, he shall determine the amount of damages, if any, to which such person is entitled as the result of such violation, and he shall enter an order directing the offender to pay the person complaining such amount on or before the date fixed in the order. A copy of the decision shall be furnished to all the respective parties to the complaint.

(9) As a result of such hearing, the commissioner may also enter any order suspending or revoking the license of a licensee or may place the licensee on probation if the commissioner determines that the licensee has committed any of the unlawful acts specified in section 12-16-115 or that the licensee has violated any of the provisions of this part 1.

(10)

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

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

(c) The commissioner shall conduct such hearing pursuant to the provisions of section 24-4-105, C.R.S., and thereafter shall enter in his office an order and decision specifying the facts established at the hearing and either dismissing the order to show cause, or directing the suspension or revocation of the license held by the licensee, or making such other conditional

or probationary orders as may be proper. A copy of said order and decision shall be furnished to the licensee.

(d) Nothing in this section shall be construed as limiting the power of the commissioner to revoke or suspend a license when he is satisfied of the existence of any of the facts specified in section 12-16-115.

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

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

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

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

(13) Complaints of record made to the commissioner and the results of his investigations may, in the discretion of the commissioner, be closed to public inspection during the investigatory period and until dismissed or until notice of hearing and charges is served on a licensee, unless otherwise provided by court order.

C.R.S.A. § 12-16-110.5 **§ 12-16-110.5. Credit sale contracts**

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

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

(b) The charges for handling, if any;

(c) The name and address of the producer or owner and the signature of the dealer or small-volume dealer or the authorized agent thereof;

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

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

(2) Records of a dealer or small-volume dealer shall be retained for a period of two years and shall reflect those credit sale contracts that have been cancelled and those that are still open. Such records shall be kept at the dealer's or small-volume dealer's place of business at all times.

(3) An annual report of the status of all of a dealer's or small-volume dealer's credit sale contracts may be required by the commissioner.

(4) All credit sale contracts entered into by a dealer or small-volume dealer shall be consecutively numbered by the dealer, and copies thereof shall be made available for inspection by the commissioner or the commissioner's authorized agents.

C.R.S.A. § 12-16-111
§ 12-16-111. Records of dealers

(1) Every dealer handling farm products for any consignor having received any farm products on commission for sale shall promptly make and keep a correct record, showing in detail the following with reference to the handling, sale, or storage of such farm products:

- (a) The name and address of the consignor;
- (b) The date received;
- (c) The condition and quantity upon arrival;
- (d) The date of such sale for the account of the consignor;
- (e) The price for which sold;
- (f) An itemized statement of the charges to be paid by the consignor in connection with the sale;
- (g) The names and addresses of the purchasers if said dealer has any financial interest in the business of said purchasers or if said purchasers have any financial interest in the business of said dealer, directly or indirectly, as a holder of the other's corporate stock, as a copartner, as a lender or borrower of money to or from the other, or in any other capacity;
- (h) A lot number or other identifying mark for each consignment, which number or mark shall appear on all sales tags or other essential records needed to show what the product actually sold for;
- (i) Any claims which have been or may be filed by the dealer against any person for overcharges or for damages resulting from the injury or deterioration of such farm products by the act, neglect, or failure of such person; and such records shall be open to the inspection of the commissioner and the consignor for whom such claims are made.

C.R.S.A. § 12-16-111.5
§ 12-16-111.5. Records of small-volume dealers

Each small-volume dealer shall maintain records of all aspects of each purchase of farm products in the form and manner required by the commissioner.

C.R.S.A. § 12-16-112
§ 12-16-112. Daily reports and settlements

(1) When requested by his consignor, a dealer, before the close of the next business day following the sale of any farm products consigned to him, shall transmit or deliver to the owner or consignor a true written report of such sale, showing the amount sold and the selling price. Remittance in full of the amount realized from such sale, including all collections, overcharges, and damages, less the agreed commission and other charges together with a complete account of sales, shall be made to the consignor within ten days after the receipt of the moneys by the dealer unless otherwise agreed to in

writing. In the account, the names and addresses of purchasers need not be given, except as required in section 12-16-111.

(2) Every dealer shall retain a copy of the record covering each consignment transaction for a period of one year after the date thereof, which copy shall, at all times, be available for, and open to, the inspection of the commissioner and the consignor or the authorized representative of either.

(3) Every dealer shall pay for farm products delivered to him on the date and in the manner specified in the contract with the owner or, if no date is set by the contract or on the date of the delivery, within thirty days after the date of the delivery or the taking possession of such farm products.