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## **Requirements for Grain Dealers**

**State of Colorado**

*Licensing*

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## Requirements for Grain Dealers

### STATE OF COLORADO

*Current with the 2<sup>nd</sup> Regular Sess. of the Sixty-Ninth General Assembly (2014)*

#### **C.R.S.A. § 12-16-104** **§ 12-16-104. Application for license--rules**

(1) No person shall act as a dealer, small-volume dealer, or agent without having obtained a license as provided in this part 1. Every person acting as a dealer, small-volume dealer, or agent shall file an application in writing with the commissioner for a license to transact the business of dealer, small-volume dealer, or agent, and such application shall be accompanied by the license fee provided for in section 12-16-105 for each specified class of business.

(2) The application in each case shall state the class or classes of farm products the applicant proposes to handle, the full name of the person applying for such license, and, if the applicant is a firm, exchange, association, or corporation, the full name of each member of the firm or the names of the officers of the exchange, association, or corporation. Such application shall further state the principal business address of the applicant in the state of Colorado and elsewhere and the names of the persons authorized to receive and accept service of summons and legal notices of all kinds for the applicant. The applicant shall further satisfy the commissioner of his character, responsibility, and good faith in seeking to carry on the business stated in the application. In determining a person's character, the commissioner shall be governed by the provisions of section 24-5-101, C.R.S.

(3) In addition to the general requirements applicable to all classes of applications, as set forth in this section, each application for an agent's license shall include such information as the commissioner may consider proper or necessary, and such application shall include the name and address of the applicant and the name and address of each dealer or small-volume dealer represented or sought to be represented by said agent and the written endorsement or nomination of such dealer or small-volume dealer. No person shall be licensed as an agent unless all of such agent's principals are licensed under this part 1.

(4) Upon the applicant's filing of the proper application with the commissioner, accompanied by the proper fee, and when the commissioner is satisfied that the convenience and necessity of the industry and the public will be served thereby, the commissioner shall issue to such applicant a license entitling the applicant to conduct the business described in the application at the place named in the application until the date specified by the commissioner by rule or until the license has been suspended or revoked. The license of an agent shall expire upon the date of expiration of the license of the principal for whom the agent acts. The commissioner may also issue a license to each agent, with a separate agent's license being required for each principal. Any dealer, small-volume dealer, or agent shall show said license upon the request of any interested person. Each licensed dealer, small-volume dealer, or agent shall post such person's license or a copy thereof in the person's office or salesroom in plain view of the public.

(5) Fraud or misrepresentation in making any application shall ipso facto work a revocation of any license granted pursuant thereto. All indicia of the possession of a license shall be at all times the

property of the state of Colorado, and each licensee is entitled to the possession thereof only for the duration of said license.

(6) Any person licensed under part 2 of this article may apply for a license as a dealer or small-volume dealer without paying the license fee otherwise required by section 12-16-105.

**C.R.S.A. § 12-16-105**  
**§ 12-16-105. License fee--renewal--rules**

(1)

(a) For filing the application described in section 12-16-104, each applicant for a license in each of the following categories shall pay to the commissioner a fee as determined by the agricultural commission, which fee shall be transmitted to the state treasurer for credit to the inspection and consumer services cash fund created in section 35-1-106.5, C.R.S.:

(I) Dealers; except that a dealer who signs an affidavit stating that such dealer shall make payment in cash or by one of the other means specified in section 12-16-106(1)(f) for each transaction for farm products shall pay the same application fee as a small-volume dealer;

(II) Agents; and

(III) Small-volume dealers.

(b)

(I) For each fiscal year, commencing on July 1, twenty-five percent of the direct and indirect costs of administering and enforcing this article shall be funded from the general fund. The agricultural commission shall establish a fee schedule to cover any direct and indirect costs not funded from the general fund

(II) Repealed by Laws 2010, Ch. 212, § 7, eff. July 1, 2012.

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

(3) Any person against whose surety a claim has been collected or any person against whom an irrevocable letter of credit has been drawn by the commissioner in accordance with the provisions of this part 1 shall not be licensed by the commissioner during the period of three years from the date of such collection; except that the commissioner may, in his discretion and consistent with the purpose of this part 1, issue a temporary license to such person for such period, subject to such restrictions as the commissioner deems reasonable and necessary.

(4) Any licensee who has a verified complaint pending against him with the commissioner shall not be issued a renewal license until the complaint has been settled to the satisfaction of the commissioner.

(5) Upon the failure of an applicant to file a bond or an irrevocable letter of credit meeting the requirements of section 11-35-101.5, C.R.S., within ninety days of the date of application, the application will be rendered void, and the license fee will not be refunded. Any subsequent application for a license shall require a new license fee.

(6) Whenever the commissioner deems it appropriate, the commissioner may require of any applicant for an initial license, any applicant for a renewal of a license, or any licensee the submission of a financial statement or an audit, prepared by a certified public accountant, or any other information to determine whether such person is in an adequate financial position to carry out his or her duties as a licensee.

**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. § 12-16-108**  
**§ 12-16-108. Disciplinary powers--licenses**

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

- (a) Violated any of the provisions of this part 1 or violated any of the rules and regulations promulgated by the commissioner pursuant to this part 1;
- (b) Been convicted of a felony under the laws of this state, or of any other state, or of the United States; except that, in considering a conviction of a felony, the commissioner shall be governed by the provisions of section 24-5-101, C.R.S.;
- (c) Committed fraud or deception in the procurement or attempted procurement of a license;
- (d) Failed or refused to file with the commissioner a surety bond or an irrevocable letter of credit, as required by section 12-16-106;
- (e) Been determined by the commissioner to be in an inadequate financial position to meet liability obligations;
- (f) Failed to comply with any lawful order of the commissioner concerning the administration of this part 1;
- (g) Had a license revoked, suspended, or not renewed or has been placed on probation in another state for cause, if such cause could be the basis for the same or similar disciplinary action in this state.

(2) All proceedings concerning the denial, refusal to renew, revocation, or suspension of a license or the placing of a licensee on probation shall be conducted pursuant to the provisions of section 12-16-107 and article 4 of title 24, C.R.S.

(3) Any previous violation of the provisions of this part 1 by the applicant or any person connected with him in the business for which he seeks to be licensed, or in the case of a partnership or corporation applicant any previous violations of the provisions of this part 1 by a partner, officer, director, or stockholder of more than thirty percent of the outstanding shares, is sufficient grounds for the denial of a license.